

**CHUGACH ELECTRIC ASSOCIATION, INC.**  
**Anchorage, Alaska**

**BOARD MEETING**  
**AGENDA ITEM SUMMARY**

**September 19, 2007**

**ACTION REQUIRED**

**AGENDA ITEM NO. XI.E.**

Information Only  
 Motion  
 Resolution  
 Executive Session  
 Other

---

**TOPIC**

Proposed amendments to Board Policy 106

**DISCUSSION**

The following motion is intended to clarify the respective responsibilities of the Board and the CEO with respect to the retention of consultants and counsel for litigation purposes and to ensure that the Board receives regular updates with regard to ongoing litigation and other legal matters. As indicated below, the Board will be presented with two options, one from Board Counsel and one from General Counsel. The primary differences in language are underlined in the two attachments.

**MOTION**

Option 1 (from Board Counsel):

It is hereby moved that the Board of Directors amend Section II(B)(8) and add new Section II(C)(1)(h) to Board Policy 106, to read as set forth in Attachment 1.

Option 2 (from General Counsel):

It is hereby moved that the Board of Directors amend Section II(B)(8) and add new Section II(C)(1)(h) to Board Policy 106, to read as set forth in Attachment 2.

## ATTACHMENT 1

### Section II(B):

#### 8. Consultants

To select and retain consultants, including law firm(s) or attorneys to represent the Association on routine legal matters. However, the Board of Directors reserves the right to disapprove the selection of law firms or attorneys for routine legal matters by the Chief Executive Officer or General Counsel of the Association.

The selection and retention of any consultants working in areas which are not delegated to the Chief Executive Officer also requires the prior approval by motion or resolution of the Board of Directors.

#### Non-routine Legal Matters

The selection and retention of law firm(s) or attorneys to represent the Association on non-routine legal matters, and of the firm performing the independent financial audit, requires the prior approval by motion or resolution of the Board of Directors. Law firms or attorneys retained for non-routine legal matters will report directly to the Board of Directors until directed otherwise by the Board, and will provide copies of their reports to the Board in addition to General Counsel, the Chief Executive Officer, and other appropriate management. Professional services contracts will reflect this. The Board may choose to authorize counsel to report to, and work with, Chugach's General Counsel and/or Chief Executive Officer with respect to those non-strategic activities which are necessary in the normal course of litigation, reserving to the Board control over strategic planning and overall case objectives.

If, in order to protect the interests of the Association, the Association needs to appoint legal counsel to represent the Association on a non-routine legal matter before a Board of Directors meeting on the issue can reasonably be held, the Chairman of the Board of Directors, after the opportunity to consult with the Chief Executive Officer or General Counsel of the Association, shall have the authority to make such appointment, subject to the ratification of said appointment by the full Board of Directors at its next meeting. In the event the Chairman of the Board is unavailable, the Vice Chairman of the Board of Directors, after the opportunity to consult with the Chief Executive Officer or General Counsel of the Association, shall have the authority to make such appointment, subject to ratification of said appointment by the full Board of Directors at its next meeting.

### Definition of Routine Legal Matters

For the purposes of this subsection, the term “routine legal matters” shall include, by way of example, collection actions by the Association against members for unpaid service or assessments; actions for breaches of utility extension agreements; public or private permit, right-of-way, or easement acquisition or litigation; actions for damages to Association distribution, transmission or generation facilities or against the Association for personal injury or property damage allegedly caused by the Association, or for breach of contract actions not involving wholesale members; actions to prevent unauthorized or dangerous excavation or other activities near Association distribution, transmission or generation facilities; third party claims filed pursuant to worker’s compensation actions; responses to formal or informal service complaints against the Association filed by non-wholesale members at the Regulatory Commission of Alaska (“RCA”); filing at RCA of fuel cost rate adjustments and other routine tariff and other RCA and regulatory compliance filings; and general consultation on employee and union grievances. “Routine legal matters” shall also include general consultation with outside counsel on non-litigation matters involving environmental issues, contracts, commercial dealings, corporate compliance issues, regulatory reporting, labor, personnel, insurance, and construction, provided that the matter does not otherwise qualify as a “non-routine legal matter.”

### Definition of Non-Routine Legal Matters

For the purposes of this subsection, the term “non-routine legal matters” shall include, by way of example, matters involving labor negotiations or unfair labor practice complaints; actions by the Association against current or former agents, employees, officers or directors, or vice versa (except for employee and union grievance matters provided under “routine legal matters” above), rate cases and non-routine tariff changes, environmental legal proceedings (including both claims and investigations) against the Association by regulatory agencies having jurisdiction over the matter or by other third parties; and claims by or against other public utilities or public entities except routine actions such as condemnation proceedings.

### Section II(C)(1)(h):

- h. To monitor and report to the Board of Directors on the Association’s routine and non-routine legal matters (as defined in Section II(B)(8) above), to supervise the Association’s legal counsel in connection with routine legal matters, and to assist

the Board of Directors in supervising such non-routine legal matters as are approved by motion or resolution of the Board of Directors.

## ATTACHMENT 2

### Section II(B):

#### 8. Consultants

To select and retain consultants, including law firm(s) or attorneys to represent the Association on routine legal matters. However, the Board of Directors reserves the right to disapprove the selection of law firms or attorneys for routine legal matters by the Chief Executive Officer or General Counsel of the Association.

The selection and retention of any consultants working in areas which are not delegated to the Chief Executive Officer also requires the prior approval by motion or resolution of the Board of Directors.

#### Non-routine Legal Matters

The selection and retention of law firm(s) or attorneys to represent the Association on non-routine legal matters, and of the firm performing the independent financial audit, requires the prior approval by motion or resolution of the Board of Directors. Law firms or attorneys retained for non-routine legal matters will report to and work with Chugach's General Counsel, the Chief Executive Officer, and management with respect to those activities which are necessary in the normal course of a legal matter; however, the Board shall have the final decision-making authority concerning the overall objective(s) of the major strategy decisions in such matter, unless otherwise directed by the Board. Retained counsel will provide copies of their reports to the Board in addition to General Counsel, the Chief Executive Officer, and other appropriate management. Professional services contracts will reflect this.

If, in order to protect the interests of the Association, the Association needs to appoint legal counsel to represent the Association on a non-routine legal matter before a Board of Directors meeting on the issue can reasonably be held, the Chairman of the Board of Directors, after the opportunity to consult with the Chief Executive Officer or General Counsel of the Association, shall have the authority to make such appointment, subject to the ratification of said appointment by the full Board of Directors at its next meeting. In the event the Chairman of the Board is unavailable, the Vice Chairman of the Board of Directors, after the opportunity to consult with the Chief Executive Officer or General Counsel of the Association, shall have the authority to make such appointment, subject to ratification of said appointment by the full Board of Directors at its next meeting.

### Definition of Routine Legal Matters

For the purposes of this subsection, the term “routine legal matters” shall include, by way of example, collection actions by the Association against members for unpaid service or assessments; actions for breaches of utility extension agreements; public or private permit, right-of-way, or easement acquisition or litigation; actions for damages to Association distribution, transmission or generation facilities or against the Association for personal injury or property damage allegedly caused by the Association, or for breach of contract actions not involving wholesale members; actions to prevent unauthorized or dangerous excavation or other activities near Association distribution, transmission or generation facilities; third party claims filed pursuant to worker’s compensation actions; responses to formal or informal service complaints against the Association filed by non-wholesale members at the Regulatory Commission of Alaska (“RCA”); filing at RCA of fuel cost rate adjustments and other routine tariff and other RCA and regulatory compliance filings; general consultation on employee and union grievances; unfair labor practice charges; employee discipline; environmental claims; EEOC,ASHRC and AHRC complaints; and routine breach of contract claims. “Routine legal matters” shall also include general consultation with outside counsel on non-litigation matters involving environmental issues, contracts, commercial dealings, corporate compliance issues, regulatory reporting, labor, personnel, insurance, and construction, provided that the matter does not otherwise qualify as a “non-routine legal matter.”

### Definition of Non-Routine Legal Matters

For the purposes of this subsection, the term “non-routine legal matters” shall include, by way of example, matters involving labor negotiations ; actions by the Association against current or former agents, officers or directors, or vice versa (except for employee and union grievance matters provided under “routine legal matters” above), rate cases and non-routine tariff changes, against the Association by regulatory agencies having jurisdiction over the matter or by other third parties; and claims by or against other public utilities or public entities except routine actions such as condemnation proceedings.

### Section II(C)(1)(h):

- h. To monitor and report to the Board of Directors on the Association’s routine and non-routine legal matters (as defined in Section II(B)(8) above), to supervise the Association’s legal

counsel in connection with routine legal matters, and to assist the Board of Directors in supervising such non-routine legal matters as are approved by motion or resolution of the Board of Directors.