

CHUGACH ELECTRIC ASSOCIATION, INC.
Anchorage, Alaska

OPERATIONS COMMITTEE MEETING
AGENDA ITEM SUMMARY

March 4, 2009

ACTION REQUIRED

AGENDA ITEM NO. VII.

Information Only
 Motion
 Resolution
 Executive Session
 Other

TOPIC

Board Policy 128 – Confidentiality

DISCUSSION

For discussion on this topic, see the attached memo from K&L Gates Attorney, Louisiana Cutler to the Board of Directors, dated February 23, 2009.

MOTION

Move that the Operations Committee recommend the Board of Directors to approve the revised Board Policy 128, Confidentiality.

TO: Board of Directors
Chugach Electric Association

FROM: Louisiana W. Cutler *LWC*

DATE: February 23, 2009

RE: Proposed changes to Board Policies 128 and 120

Attached for your review and consideration are revised drafts of the above referenced Board Policies. *See Attachments A (Board Policy 128) and B (Board Policy 120).* Dave originally outlined most of the changes included in the drafts in a January 12, 2008 memo to Brad which was discussed with you at the Board Operations Committee meeting on January 14, 2009. *See Attachment C.* Our experience with reviewing the confidential documents presented to the Board for potential release to members confirms our belief that the proposed changes are needed.

The proposed changes attempt to accomplish the following:

1. Clarify inconsistencies between what constitutes confidential information and what can be released to the members under the Bylaws, Board Policy 120 and Board Policy 128.
2. Use uniform descriptions of the kinds of information considered confidential in Board Policies 120 and 128.
3. Remove procedure in Board Policy 128 for designating documents as "Extremely Confidential and Sensitive Information; For Your Review Only" since this procedure is never used.
4. Clarify the confusion and inconsistency in Board Policy 128 about the roles of the Board and the administration in the review of confidential documents provided to the Board twelve months previously (hereafter "review and potential release procedures").
5. In light of our discussion at the January 14, 2009 Operations Committee meeting, amend the policy to provide for the review and potential release procedures to occur every six months instead of every month. Additionally, during each semi-

annual review period, in addition to documents given to the Board during the previous six months, the administration and Board would also reconsider whether documents that were previously reviewed but not released, should now be released.

6. Clarify treatment of confidential documents related to collective bargaining agreement negotiations in the review and potential release procedures (*see* proposed section II-E.4(a)). The current language is arguably inconsistent with the Bylaws as well as Board Policies 120 and 135.
7. In the review and potential release procedures, clarify treatment of certain documents originally presented to the Board on a confidential basis to conform to the requirement that they retain their confidential status only if their *immediate* release would continue to have an adverse impact on the finances of the Association. *See* proposed section II-E.4(b).
8. Remove the authority of the CEO to release confidential documents under Board Policy 128. That authority is provided for in Board Policy 120 with more detailed procedures and guidelines for release and therefore, it is somewhat confusing to provide for it again in Board Policy 128 without any guidance or procedures for such release. Additionally, Section II-D.2 of the attached draft of Board Policy 128 provides that the CEO can request release of a particular item of confidential information by the Board even if its release has not been requested under Board Policy 120.
9. In Board Policy 120, remove the requirement that a request for confidential information be determined by the Board instead of the CEO. However, an appeal to the Board of the CEO's determination is added. This procedure is consistent with the procedure for rejecting other information requests in Board Policy 120 and will enable the request to be responded to more promptly as required in Board Policy 120.
10. Streamline Section III, Responsibilities, of Board Policy 128. For example, the current language about legal and equitable remedies is largely unnecessary and may be narrower than remedies available to the Association through statute and case law.
11. Clarify obligations of directors and employees in Board Policy 128 to protect the confidential status of confidential information, including the requirement that a

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Memorandum
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director return all confidential information in his or her possession upon termination of his or her Board term.

I look forward to discussing the proposed revisions with you at the March 4, 2008 Operations Committee meeting.

Attachments

cc: Brad Evans
Dave Smith

ATTACHMENT A

CHUGACH ELECTRIC ASSOCIATION, INC.

BOARD POLICY: 128

REVISION DATE: March 4, 2009

CONFIDENTIAL INFORMATION

I. OBJECTIVE

To adopt policies and procedures to insure the protection of confidential information of the Association, as well as confidential information of Association members and third parties with whom the Association does business if such confidential information is in the possession of the Association.

II. CONTENT

A. Definition of “Confidential Information”.

“Confidential information” means any confidential thought or communication preserved in a tangible medium, including hard copy videotapes; audiotapes; or electronic documents such as memos, reports, correspondence and handwritten notes, as well as any electronically stored information, including e-mail, electronic document files (for example, Word documents, Excel spreadsheets, PowerPoint presentations, Access databases) regardless of where they are stored (for example, on removable media such as CD, DVD, jump drives, hard disks, or file servers).

B. Categories of Confidential Information.

Confidential information will generally fall into one of the following categories:

1. All information provided to the Board of Directors (hereafter “Board”) during executive sessions in accordance with AS 10.25.175, Article V, Section 5 of the Association’s Bylaws and Board Policy 103;
2. Privileged and confidential attorney-client information;
3. Attorney work product;
4. Information protected by privacy laws;
5. Trade secrets, information protected by patent or copyright, or similar information;

6. Proprietary information that if revealed to competitors, would disadvantage the Association;
7. Confidential personnel information;
8. Information which the Association is contractually required to keep confidential;
9. Information protected by the self-evaluative privilege;
10. Information subject to Securities and Exchange Commission nondisclosure rules; or
11. Any other information that is required to be kept confidential under applicable state or federal law.

Questions concerning the confidential status of any information shall be directed to the Chief Executive Officer or his or her designee.

C. Obligations of Employees and Board Directors to Maintain Confidentiality.

1. While serving on the Board or at any time thereafter, the following confidentiality provisions apply to members of the Board of Directors (hereafter "Directors"):
 - a. Directors shall not, either directly or indirectly, disclose or permit the disclosure of, reproduce, or in any other way publicly or privately disseminate, any confidential information to any third parties except as provided herein.
 - b. To the extent expressly authorized by the Board, a Director may disclose confidential information in order to carry out the Director's duties to the Association.
 - c. Directors shall not use confidential information for the Director's personal gain or advancement, or to the detriment of the Association. Examples include, but are not limited to, confidential information regarding bids, awarding of contracts, or real estate transactions, or personnel information other than the information available to members under Article XVII, Section 1(b) of the Association Bylaws and Board Policy 120.
 - d. Directors shall not remove confidential information from the Association's facilities except as necessary to perform official Association duties.
 - e. All confidential information or documents furnished to directors, used by them on the Association's behalf, or generated or obtained

by them during their membership on the Board shall be and remain the property of the Association.

- f. Directors shall return all confidential information in their possession to the Executive Assistant immediately upon termination of their term as a Director.
 - g. Directors, at the discretion of the Board, may be required to sign written confidentiality agreements in order to effectuate the terms of this Policy.
2. While employed by the Association, or at any time thereafter, the following confidentiality provisions apply to employees:
- a. Employees shall not, either directly or indirectly, disclose or permit the disclosure of, reproduce, or in any other way publicly or privately disseminate, any confidential information to any third parties except as, and to the extent expressly authorized by, the employee's supervisor to carry out the employee's duties.
 - b. Employees shall not use confidential information for the employee's personal gain or advancement, or to the detriment of the Association. Examples include, but are not limited to, confidential information regarding bids, awarding of contracts, or real estate transactions, or personnel information other than the information available to members under Article XVII, Section 1(b) of the Association Bylaws and Board Policy 120.
 - c. Employees shall not remove confidential information or documents from the Association's facilities except as necessary to perform official Association duties.
 - d. All confidential information or documents furnished to employees, used by them on the Association's behalf, or generated or obtained by them during their employment shall be and remain the property of the Association.
 - e. Employees shall return all confidential information in their possession to the employee's supervisor immediately upon request of the employee's supervisor, and immediately upon termination of employment with the Association.
 - f. Employees, at the discretion of the Chief Executive Officer, may be required to sign written confidentiality agreements in order to effectuate the terms of this Policy.
3. This Policy supplements, and does not supersede, duties and obligations imposed upon Directors and employees by applicable state or federal law.

D. Potential Release of Confidential Information.

1. Confidential information shall not be released except in accordance with the release procedures provided for in Article XVII of the Association Bylaws, this Policy, or in Board Policy 120, "Requests For Association Information."
2. Notwithstanding the release procedures provided for in this Policy or in Board Policy 120, if at any time a Director or the Chief Executive Officer believes that it is in the best interests of the Association to release particular confidential information, he or she may bring the matter to the attention of the full Board for consideration and action.
3. Nothing in this Policy shall prohibit the Association from complying with obligations it may have under state and federal law or lawful orders of governmental authorities, to release, or to prohibit the release of confidential information.

E. Scheduled Review and Potential Release of Confidential Documents Presented to Board.

Confidential hard copy or electronically stored documents provided to the Board or to a Board Committee (collectively referred to herein as the "Board") shall be reviewed and may be released to Association members in accordance with the procedures set forth in this section.

1. The Executive Assistant shall keep a Confidential Board Documents Log ("CDDL") as well as the documents included in the CDDL. The CDDL shall list all the documents and the reasons why they were originally provided to the Board on a confidential basis, using the categories of confidential information provided for in Section II-A of this Policy as a guide.
2. In January and July of each year, the Executive Assistant shall forward to the Sr. Vice President, Administration ("SVP, Administration"), the documents and CDDL log entries for all confidential documents presented to the Board during the previous six months. Additionally, in January and July of each year, the Executive Assistant shall also forward to the SVP, Administration any confidential documents provided to the Board for which a determination was previously made under this Policy that the document would not be released. The SVP, Administration shall reconsider the original determination not to release the document in accordance with the procedures outlined in this Section.
3. The SVP, Administration (or his or her delegate) shall review the confidential documents and make an initial determination as to whether they should remain confidential, be available for release, or be available for release in redacted form using the categories of confidential information provided for in Section II-A of this Policy as a guide.

4. Further, the SVP, Administration shall be guided by the following more specific guidelines for confidential documents related to labor negotiations and financial, strategic and long-term planning, unless application of such guidelines to a particular confidential document would not be in the best interest of the Association:
 - a. Collective bargaining agreements will be released in accordance with Article XVII, Section 1(c) of the Association Bylaws and Board Policy 120. Analyses and other information describing (i) a ratified agreement and (ii) all voted on, but rejected provisions, will be released, except that analysis and bargaining strategies prepared or used in connection with collective bargaining negotiations will not be released. Cost benefit analyses provided to the Board in accordance with Board Policy 135, "Approval of Collective Bargaining Agreements," on a confidential basis, shall not be released. Cost benefit analyses made available to the public under Board Policy 135 should not be considered confidential information included in the CBDL provided for in this Policy.
 - b. Documents concerning financial, strategic and long-term planning matters, the immediate disclosure of which would have had an adverse effect on the finances of the Association when originally presented to the Board, will be released after termination of the circumstances that would cause immediate disclosure of the information to have an adverse effect on the finances of the Association.
5. In addition to applying the guidelines provided for in Section II-E.3 and 4 of this Policy, the SVP, Administration shall consult with the Association's general counsel or contract attorney, the author of the document, or anyone else he or she needs to consult, to make his or her initial determination.
6. The SVP, Administration and the Association's general counsel or contract attorney shall then prepare a memorandum to the Board describing the initial determinations.
7. The Chief Executive Officer shall review the initial determinations and either approve or amend them. The memorandum to the Board shall reflect the CEO's determinations.
8. After review by the CEO, the memorandum shall be provided to the Board as confidential information.
9. If no Director objects to the initial determinations included in the memorandum at the Board meeting following presentation of the memorandum to the Board, the documents scheduled for potential release

would then become available to requesting members. If a Director objects to any particular initial determination to release or not release a document, that determination would be reconsidered by the Board in executive session at the next Board meeting, and then addressed if necessary via motion in open session.

10. If any release of information under this Policy triggers Securities Exchange Commission reporting requirements, timely reports will be made.

III. RESPONSIBILITIES

- A. Each Director and employee shall comply with this Policy.
- B. The Chief Executive Officer shall inform all employees about the content of this Policy and use his or her best efforts to insure compliance with it.
- C. Any Director or employee whose conduct violates this policy may be subject to: (1) if Chief Executive Officer, termination by appropriate action of the Board of Directors in accordance with any contract of employment; (2) if an employee, termination by appropriate action of the Chief Executive Officer; or (3) if a Director, removal pursuant to Article IV, Section 7 of the Association's Bylaws.
- D. The Association may seek legal and equitable relief in any court of competent jurisdiction to prevent or restrain any disclosure, breach or threatened breach of confidentiality that violates this Policy. Further, the Association shall seek to enforce the legal protections afforded to confidential information.
- E. The Board Chair and the Chief Executive Officer are responsible for the administration of this Policy.

Date Approved: March 4, 2009

Alex Gimarc
Secretary of the Board