

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

**OPERATIONS COMMITTEE MEETING**  
**AGENDA ITEM SUMMARY**

**March 4, 2009**

**ACTION REQUIRED**

**AGENDA ITEM NO. VIII.**

Information Only  
 Motion  
 Resolution  
 Executive Session  
 Other

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**TOPIC**

Board Policy 120 – Request for Association Information

**DISCUSSION**

For discussion on this topic, see the memo from K&L Gates Attorney, Louisiana Cutler to the Board of Directors, dated February 23, 2009, which is included with the previous Agenda Item, No. VII.

**MOTION**

Move that the Operations Committee recommend the Board of Directors to approve the revised Board Policy 120, Request for Association Information.

**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 B**

## **CHUGACH ELECTRIC ASSOCIATION, INC.**

**BOARD POLICY: 120**

**REVISION DATE:**

### **REQUESTS FOR ASSOCIATION INFORMATION**

#### **I. OBJECTIVE**

The objective of this Policy is:

- A. To establish the procedures to be followed in responding to requests for Association information from members of the Association;
- B. To establish the cost of reproduction to be charged;
- C. To provide a procedure for rejecting requests; and,
- D. To provide a procedure for appealing rejected requests.

#### **II. CONTENT**

- A. Requests for current Articles of Incorporation, bylaws, Board policies, annual reports, and newsletters of the Association shall be provided to the requesting member at no charge and such requests shall not be required to be accompanied by a completed Request for Information Form.
- B. The following information shall be provided to a member pursuant to Article XVII of the Association Bylaws upon completion of a Request for Information Form and payment of the cost of producing the information as provided in Paragraph J below:
  - 1. Names and mailing addresses of Association members when requested by a candidate running for election to the Association Board;
  - 2. Requests for salary, title, job classification and position description, benefits, leave accrued and cashed-in, and hours worked, but not

- employee name, for each employee in the Association;
  3. Collective bargaining agreements to which the Association is a party;
  4. Documents provided in open session of board or committee meetings, including but not limited to, minutes, budget documents, feasibility studies, audits, cost effectiveness studies, and correspondence between the Association and third parties;
  5. Published information which shall include documents provided to any regulatory authority including, but not limited to, the Regulatory Commission of Alaska (RCA), Federal Energy Regulatory Commission (FERC) and Securities and Exchange Commission (SEC) filings.
- C. The Chief Executive Officer or his/her designee will determine whether or not the requested document or publication falls within paragraph II.A. or II.B. above.
- D. All requests for documents or information which do not fall under paragraphs II.A. or II.B. above shall be accompanied by a Request for Information Form which has been completed and signed by the requestor. The completed form shall be submitted to the Chief Executive Officer or his/her designee who shall determine if the request is being made for a proper purpose. For the purposes of this Policy, Article XVII of the Bylaws, and consistent with Alaska Statute 10.25.235, a proper purpose is one that is necessary for the member to protect or carry out his or her membership interest in the Association.
- E. Requests that are determined not to be by a member and for a proper purpose shall be denied. Any denial of a request for information shall be accompanied by an appropriate explanation. Any request that has been denied may be appealed to the Board of Directors and the Board shall make the final decision whether the request is for a proper purpose.
- F. Confidential information shall not be released. Confidential information will generally fall into one of the following categories:
1. All information provided to the Board of Directors 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.

Any denial of a request for confidential information shall be made by the Chief Executive Officer and shall be accompanied by an explanation of the reasons for the denial. A denial may be appealed to the Board of Directors. The Association shall also seek judicial protection of court-imposed conditions on confidential information if necessary.

- G. Except as provided in Article XVII of the Association Bylaws, or in Paragraphs H and I below, information contained within a member's file is confidential and will not be provided to anyone except that individual member or his or her spouse upon receipt of proper identification. Presentation of a Release of Information form signed by an authorized agent is also acceptable. Information will not be released to law enforcement personnel or other individuals or agencies without a subpoena or search warrant. However, the Association may disclose to law enforcement personnel without a subpoena or search warrant information from member's files relating to crimes committed against the Association by that member.
- H. In order to minimize the risk of abandoned properties freezing up, and notwithstanding the provisions of Paragraph G above, the Association will transfer billing responsibility to lenders and property management companies having a bona fide interest in property served by the Association in lieu of

physical disconnection of service for nonpayment. This transfer will be done under procedures as may be set forth by the Association.

- I. The Association has the right and the duty to safeguard the disclosure of the Association's membership list. Therefore, the Association's membership list will not be revealed, distributed, or released except to candidates running for election to the Association Board provided the member requesting the membership list certifies that he or she shall use the list only for the Board election. The Association shall also seek judicial protection of court-imposed conditions on the use of the membership list, if necessary.
- J. The charge for copies of Association documents shall be \$2.00 for the first page, five (.05) cents per each additional page, and twenty (20) dollars per hour for labor for researching and making copies of the documents if the time spent exceeds one-half hour. An estimate of reproduction costs may be requested prior to copying. Members may review the documents requested prior to copying to determine what pages they want copied but must still pay the cost of researching those documents.
- K. The Association recognizes that the cost of reproducing voluminous studies and reports may place a financial burden on the resources of many individuals. Therefore, the Association shall, whenever possible, make available at least one copy of major studies and reports that are not confidential to interested members for inspection at the Association's headquarters. Members can review and designate what portion or pages of those reports, if any, they wish copied.
- L. All completed requests for information will be handled as expeditiously as possible, given the operating needs of the Association.

### III. RESPONSIBILITIES

#### A. Board of Directors

It shall be the ultimate responsibility of the Board of Directors to ensure that non-confidential information requested for a proper purpose is released to members in accordance with this Policy.

#### B. Chief Executive Officer

It shall be the responsibility of the Chief Executive Officer to implement this policy by promptly providing non-confidential documents requested for a

proper purpose, and by promptly denying all others requests with an appropriate explanation.

Date Approved: \_\_\_\_\_

Attested: \_\_\_\_\_

Secretary of the Board

BP: 120



FOR USE BY CHUGACH ELECTRIC ASSOCIATION, INC.

<u>DATE</u>	<u>BY</u>	<u>ACTION</u>
_____	_____	Request received.
_____	_____	Member status verified. Member since _____.
_____	_____	Denied. No proper purpose stated. (Explain)
_____	_____	Denied. No documents or records in existence.
_____	_____	Reproduction costs estimated and reported to requestor.
_____	_____	ESTIMATED COST: \$ _____
_____	_____	Requestor declined to pay costs.
_____	_____	Requestor informed copies ready. ACTUAL COST: \$ _____
_____	_____	Documents delivered. Payment received.