

CHUGACH ELECTRIC ASSOCIATION, INC.
Anchorage, Alaska

OPERATIONS COMMITTEE MEETING
AGENDA ITEM SUMMARY

December 10, 2008

ACTION REQUIRED

AGENDA ITEM NO. XIII.a.

Information Only
 Motion
 Resolution
 Executive Session
 Other

TOPIC

Increasing the size of the Board from 7 to 9 members (Bylaws – Article IV, Directors and Articles of Incorporation – Article VI.)

DISCUSSION

The purpose of this proposal is to increase the size of the Board from 7 to 9 members. Both the Bylaw, Article IV, Directors (Attachment A) and the Articles of Incorporation, Article VI (Attachment B) needs to be changed. Changing the Articles of Incorporation could be done in a number of ways. Three suggestions follow and the Committee should choose the language it prefers.

MOTION

Bylaw - Move that the Operations Committee recommend the Board of Directors forward to the Bylaws Committee the proposed Bylaw change to Article IV, Directors.

Articles of Incorporation – Move that the Operations Committee recommend the Board of Directors forward to the Bylaws Committee the proposed Articles of Incorporation change to Article VI.

ARTICLE IV

DIRECTORS

SECTION 1. General Powers. The management of the business and the affairs of the Association shall be vested in a board of ~~seven-nine~~ (79) directors who shall exercise all of the powers of the Association, except such as are by law, the articles of incorporation, or by these bylaws conferred upon or reserved to the members.

SECTION 2. Election and Tenure of Office. ~~The persons named as directors in the articles of incorporation shall compose the board of directors until their successors shall have been elected and shall have qualified.~~ Directors shall be elected by secret ballot either mailed or cast in person at annual or special meetings of the membership, ~~by and from the members,~~ to serve for a three-year term, not to exceed three consecutive three-year terms ~~(excluding service of an unexpired term to fill a vacancy), and until their successors shall have been elected and qualify qualified, except in the case of the death, resignation or removal of any director.~~ By resolution of the board of directors, the directors shall be divided into three classes designated Class I, Class II and Class III, each class to consist, as nearly as possible, of one-third (1/3) of the total number of directors constituting the entire Board. The directors elected at the 2010 annual meeting of members shall be designated as Class I and their term of office shall expire at the 2013 annual meeting of members. The directors elected at the 2011 annual meeting of members shall be designated as Class II and their term of office shall expire at the 2014 annual meeting of members. The directors elected at the 2012 annual meeting of members shall be designated as Class III and their term of office shall expire at the 2015 annual meeting of members. Thereafter provided that each class shall continue to be elected in succeeding years, the terms of directors shall be staggered so that one third of the directors, or a number as close to one third as possible, shall be elected each year. The directors elected to fill vacancies as provided in Article IV, Section 8 of these bylaws, shall serve only for the unexpired portion of the term vacated. Where the remaining unexpired terms to be filled are of different lengths, the longest term shall be given to the director receiving the most votes. If the size of the board is subsequently increased, the initial terms of the directors to fill the newly created seat or seats shall be scheduled so that, as nearly as possible, an equal number of terms expire each year. At each annual or special meeting, members shall be elected to fill the seats on the board which become vacant as contemplated by Article IV, Section 8 of these bylaws.

SECTION 3. Qualifications. (a) A person shall be eligible to serve as a director, who:

- 1) Has been a member and bona fide resident in the area served by the Association for 12 continuous months before appointment to the board, or the notice of the election;
- 2) Is not in any way employed by a competing enterprise, however, an employee of the Municipality of Anchorage who is not directly employed by Municipal Light and Power is eligible to serve if he or she has no fiduciary duties which in any way pertain to Municipal Light and Power;
- 3) Does not have a financial interest in a competing enterprise;
- 4) Is not a supplier, contractor, consultant, or other entity which does business with the Association or a person with more than a 10% ownership interest in a supplier, contractor, consultant, or other

entity which does business with the Association, except for providers whose annual business with the Association does not exceed \$25,000;

5) Is not an employee of the Association nor a member, officer, director, nor employee of any union local currently acting as a bargaining agent for Association employees;

6) Is not a person living in the same household with and financially interdependent upon any person included in paragraphs 2, 3, 4, and 5, above; ~~and~~

7) Maintains i) his or her membership ~~and~~; ii) bona fide residency in the area served by the Association, ~~and iii) a minimum of 12 continuous months of bona fide residency in the area served by the Association~~ throughout his or her term of office; ~~[and]~~

~~8) Has not exceeded, or would not exceed if elected to the applicable term, the limit on board service specified in Article IV, Section 2; [and~~

~~9) Agrees to obey the rules and any official action of the Association's Campaign Conduct and Finance Commission].~~

~~(b) An individual who is the authorized representative of a non natural entity (corporation, association or partnership, for example) which itself is qualified under subsection (a) may become or remain a director if he is qualified under subsections (a)(1), (2), (3), (4), (5), (6) and (7). If the individual or the non natural member fails to meet the prescribed qualifications, or if the non natural member changes its authorized representative, the individual shall become subject to removal under subsection (c), and the director's position shall become vacant, without power of appointment by the non natural member.~~

~~(eb)~~ Upon establishment of the fact that a director is holding office in violation of any of the foregoing provisions ~~including or violated~~ the disclosure provisions of Article III, Section 9(b), subsection (2), the board of directors shall remove such director from office unless the basis for disqualification is remedied within thirty (30) days of notice of disqualification by the board of directors.

(d) Directors are ineligible for employment by the Association for a period of two (2) years after their term has expired.

(e) "Bona fide resident" is hereby defined to mean: ~~1) a person whose primary residence is in the area served by the Association, and who actually lives at this primary residence with the intention to remain there permanently or indefinitely and 2) a non natural entity who chooses as their authorized representative a person who is a "bona fide resident" as defined in 1).~~

"Primary residence" shall mean the residence that is the chief or main residence of the person and where the person actually lives for the most substantial portion of the year. "Intention" shall mean the unequivocal intention of the person as evidenced by that person's acts and words and by the circumstances.

~~The failure of a director to meet the qualifications for service Nothing contained in this section shall not affect in any manner whatsoever the validity of any action taken at any meeting of the board of directors.~~

SECTION 4. Nominations. No person may be elected a director by the members unless nominated pursuant to this Article IV, Section 4.

(a) Nominating Committee. The board of directors shall appoint a committee on nominations by December 31st of each year, as provided for in Article XV of these bylaws. The committee shall consist of not less than five nor more than seven members, who shall be selected from different sections of the service area of the Association as to insure equitable representation. No member of the board of directors may serve on such committee. The committee shall seek qualified candidates, as well as screen potential nominees. Public notice for nominations shall be given ninety days prior to the meeting. The committee, keeping in mind the principle of geographical representation, shall approve, prepare and post at the principal office of the Association, at least seventy days before the meeting, a list of nominations for directors, which may include a greater number of candidates than are to be elected.

(b) Petition. Any fifty or more members, acting together, may make other nominations by petition not less than sixty days prior to the election, and the secretary of the board shall post such nominations at the same place where the list of nominations made by the committee is posted.

SECTION 5. Appointment of Consultants and Chief Executive Officer. The board of directors may engage the services of advisors, consultants and other professionals to advise it from time to time ~~as well as appoint a Chief Executive Officer. The Chief Executive Officer may be but shall not be required to be a member of the Association. The Chief Executive Officer shall, together with such other staff, agents and employees as he may select, including such non-statutory officers as he shall appoint, perform such duties and exercise such authority as the board of directors may from time to time vest in him.~~

SECTION 9. Compensation. (a) ~~Directors shall not receive any salary for their services as directors, except that, b~~By resolution of the board of directors, directors may receive a fixed fee and expenses of attendance, if any, ~~may be allowed~~ for each day of attendance at each meeting of the board of directors, or a meeting of a committee thereof, or when a director is otherwise representing the Association in an official capacity and for each day of necessary travel in connection with any such ~~and from a meeting of the Board or other meeting while officially representing the Association.~~ No attendance other than regular or special board or committee meetings shall be reimbursed unless authorized ~~in advance~~ by ~~the a~~ majority vote of the board. A director may not be compensated for more than two regular board meetings per month, and an additional 12 special board meetings per year. The total compensated meetings shall not exceed 70 meetings per year for a director, and 85 meetings per year for the chairman of the board. The Association may not provide health insurance for directors or their families (other than for a family member employed by the Association who is not living in the same household as the director and who is not financially interdependent upon the director), or insurance for risks except those incurred in their capacity as directors.

(b) Directors' expense reimbursement requests shall be reviewed and approved by the majority vote of the board.

(c) Except for the meeting fees authorized by Article IV, Section 9(a) of these bylaws, Directors may not receive salaries for their services as directors, and, except in emergencies, shall not receive salaries for their services in any other capacity without the approval of the members.

Alaska Statute 10.25.140, Board of Directors, states that the cooperative shall be managed by a Board of not less than five directors and the Bylaws shall prescribe the number.

Chugach's Articles of Incorporation (Article VI) and its Bylaws (Article IV, Section 1) currently state the number of directors is seven. If the Board wishes to change this number, both the Articles of Incorporation and the Bylaws need amended by vote of the members. However, changing the Articles of Incorporation requires a higher member voting approval (2/3 of the members voting on the issue) than the Bylaw amendment (a simple majority of the members voting on the issue) and needs to be part of the ballot item for the Bylaw amendment. The ballot proposal should be worded to state that either both pass or both fail to avoid conflicting language should the members pass the Bylaw amendment but fail to get enough votes to amend the Articles of Incorporation.

Changing the Articles of Incorporation could be done in a number of ways. Three suggestions follow and the Board should choose the language it prefers.

ARTICLES OF INCORPORATION

ARTICLE VI

OPTION 1:

The number of directors of this corporation shall be set by the Bylaws of the Association but shall be no less than seven (7).

OR, OPTION 2:

Unless a greater number is provided in the Bylaws, [t]he number of directors of this corporation shall be seven (7).

OR, OPTION 3:

The number of directors of this corporation shall be nine (9).

(The remainder of Article VI remains unchanged)