

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 THIRD JUDICIAL DISTRICT

3 CHUGACH ELECTRIC,)
4 Plaintiff,)
5 vs.)
6 RAY KREIG , STEPHEN ROUTH)
7 and CHUGACH CONSUMERS)
8 Defendants) Case No. 3AN-06-13743 CI

9 ANSWER OF CHUGACH CONSUMERS, RAY KREIG, AND STEPHEN ROUTH

10 Chugach Consumers, Stephen Routh, and Ray Kreig (“Chugach Consumers”), by and
11 through its attorney, Kenneth P. Jacobus, P.C., answer and defend against Chugach Electric
12 Association, Inc. (“CEA”) as follows:

- 13 1. Chugach Consumers admits the allegations in paragraph 1 of the complaint.
14 2. Chugach Consumers admits the allegations in paragraph 2 of the complaint.
15 3. Chugach Consumers admits the allegations in paragraph 3 of the complaint.
16 4. Chugach Consumers admits that Ray Kreig received and inspected copies of
17 documents during this tenure on the Board of Directors, and denies the remaining allegations in
18 paragraph 4 of the complaint.

19 5. Chugach Consumers admits the allegations in the three subparagraphs of
20 paragraph 5 of the complaint as to Ray Kreig (“Kreig”) having received copies of the subject
21 items but denies CEA claims of privilege as follows:

- 22 a. Chugach Consumers admits the allegation in subparagraph 5a. as to Kreig
23 having received a copy of the subject item identified by CEA as the “Black Book.” Regarding
24 the last sentence in subparagraph 5a., Chugach Consumers denies that the item identified by
25 CEA as the “Black Book” is properly characterized as “privileged attorney-client
26 communications and proprietary information owned by Chugach”. Chugach Consumers believes
27

1 that much of what CEA designates as legal advice is actually business advice and thus not
2 subject to privilege. Chugach Consumers admits the allegation in subparagraph 5b. as to Kreig
3 having distributed to the CEA Board of Directors the subject item identified by CEA as the
4 "April 2006 Memo". Regarding the last sentence in subparagraph 5b., Chugach Consumers
5 denies that this item is privileged. It is business advice and thus not subject to privilege.

6 b. Chugach Consumers does not know exactly what is referred to by CEA in
7 the first sentence of this paragraph. Kreig did receive a number of studies prepared by UMS
8 during that period but CEA does not identify which "UMS Study" is the subject of the complaint
9 subparagraph 5c. Indeed it was through Kreig's very own initiative that CEA even participated
10 in this first of the many series of comparative benchmarking and performance studies in 1996.
11 Kreig was CEA board president at the time when he learned of the group benchmarking project
12 under way with the National Rural Electric Cooperative Association ("NRECA") for about 20
13 fast growing large cooperatives. Kreig asked NRECA for special consideration to add CEA to
14 that study already underway, advocated strenuously for it, and participation by CEA was
15 ultimately granted by NRECA. It was always assumed and understood that at least summary
16 findings would be made public from this benchmarking effort.

17 Chugach Consumers lacks knowledge and information sufficient to form a
18 belief as the truth of the allegations in the 2nd and 3rd sentences of subparagraph 5c. and therefore
19 denies same.

20 Chugach Consumers lacks knowledge and information sufficient to form a
21 belief as the truth of the allegations in the 4th sentence of subparagraph 5c. and therefore denies
22 same. CEA has failed to identify which UMS report is the subject of this allegation.

23 Chugach Consumers lacks knowledge and information sufficient to form a
24 belief as the truth of the allegations in the 5th and final sentence of subparagraph 5c. and therefore
25 denies same. The Exhibit A referred to does look to Kreig to be similar to the NRECA-PACE
26 benchmarking project agreement to the best of his memory now ten years later but it is not signed
27

1 by either party and may just be a proposal.

2 6. Chugach Consumers lacks knowledge and information sufficient to form a belief
3 as the truth of the allegations in the 1st and 2nd sentences of paragraph 6 and therefore denies
4 same. Chugach Consumers points out that policies that may be passed by the Chugach Board
5 cannot override state statute and common laws governing the fiduciary obligations of directors to
6 the members of CEA that they represent. Chugach Consumers admits the allegations in the last
7 sentence of paragraph 6 of the complaint.

8 7. Chugach Consumers admits the allegations in paragraph 7 of the complaint.

9 8. Chugach Consumers admits the allegations in paragraph 8 of the complaint.

10 9. Chugach Consumers denies all allegations in paragraph 9 of the complaint.

11 10. Chugach Consumers admits the allegations in paragraph 10 of the complaint.

12 11. Chugach Consumers denies all allegations in paragraph 11 of the complaint.

13 Chugach Consumers points out again that policies that may be passed by the Chugach Board
14 cannot override state statute and common laws governing the fiduciary obligations of directors to
15 the members of CEA that they represent.

16 12. Chugach Consumers denies all allegations in paragraph 12 of the complaint.

17 Kreig has given none of the subject documents to Stephen Routh or to others in Chugach
18 Consumers or deposited any of them in the files of Chugach Consumers. They remain in his
19 personal files kept both at home and at his place of work. At all times Kreig has carefully
20 preserved the confidentiality of subject documents including ensuring that they were submitted to
21 the regulator of CEA, the RCA, in the confidential filing channel of 3 AAC 48.040 as well as
22 under seal to the Superior Court.

23 **FURTHER ANSWERS AND AFFIRMATIVE DEFENSES**

24 1. CEA fails to state a claim on which relief can be granted.

25 2. Board Policy No. 128, as it existed at the time that Ray Kreig was on the Board of
26 Directors, did not require that documents provided to the Board members be returned to CEA.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. The assertions made by CEA and orders demanded are barred by state and common laws governing the fiduciary obligations of directors to the members of CEA that they represent.

4. CEA has unclean hands in his matter, and any relief to it is barred.

5. CEA directors have potential liability even after leaving board service for decisions made while on the board. This liability is both of a fiduciary and financial nature as well as political and moral accountability. It is unacceptable and unlawful to strip them of their personal files for decisions made while they were on the board. This is not good public policy.

6. Some or all of the relief is barred by the doctrine of laches, waiver or estoppel.

7. Neither Stephen Routh nor Chugach Consumers have any of the documents referenced in the complaint in their possession or under their control.

8. CEA's insistence on permanent and perpetual secrecy is improper. CEA ratepayers are the owners of CEA. They paid out of their rates to have the UMS benchmarking information done. These comparative economic efficiency studies are key information. CEA member-owners are entitled to know the results, at the very least at the summary level. It is long overdue that it be made public. It's after all been ten years. Rational public policy mandates it even if it is embarrassing to CEA management.

9. Chugach Consumers reserves the right to assert additional affirmative defenses discovered during the course of discovery.

REQUEST FOR RELIEF

Chugach Consumers requests the following relief:

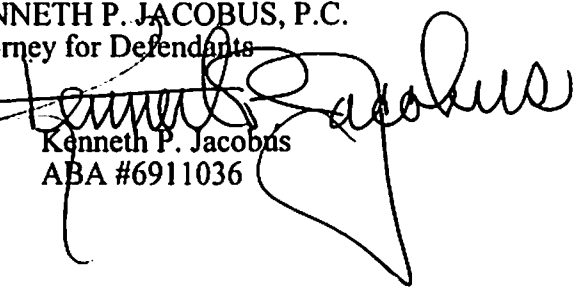
1. CEA's complaint be dismissed,
2. Stephen Routh and Chugach Consumers be immediately dropped from this lawsuit,
3. That this Court award the defendants thier costs, including full reasonable attorney fees, and,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. That this Court award such further relief as may be just and proper.

DATED this 9th day of January, 2007.

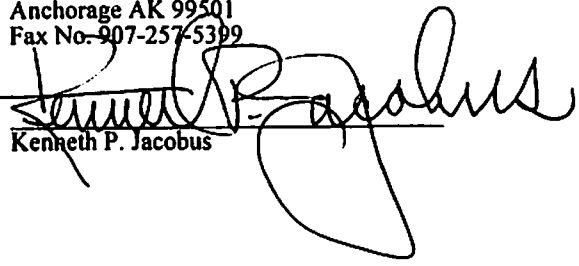
KENNETH P. JACOBUS, P.C.
Attorney for Defendants

By 
Kenneth P. Jacobus
ABA #6911036

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January, 2007, copies of the Answer were faxed and mailed to:

Robert K. Stewart, Jr.
Karmyn A Olmstead
Davis Wright Tremaine LLP
701 W. 8th Avenue, Suite 800
Anchorage AK 99501
Fax No-907-257-5399


Kenneth P. Jacobus

KENNETH P. JACOBUS
A PROFESSIONAL CORPORATION
310 K Street, Suite 208
ANCHORAGE AK 99501-2064
TELEPHONE (907) 277-3333