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and Ray Kreig

THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

CHUGACH CONSUMERS and RAY KREIG Plaintiffs, vs. CHUGACH ELECTRIC ASSOCIATION, INC. Defendant.	**REPLY TO OPPOSITION TO MOTION FOR EXTENSION OF TRO** U.S. District No. 3:06-cv-280 (TRB)

Initially, the attention of this Court is called to the Motion to Remand, filed on December 17, 2006. The arguments made there are incorporated in this reply. This Court does not have jurisdiction over RCA rate-making proceedings, and this case should be remanded to the Alaska state court. This Court should simply continue this TRO until the motion to remand is ruled on to allow the matter to be resolved on the merits by the Alaska state courts, or this Court if remand is not granted. The State Court would then consider the extension of any relief on the merits, as well as the posting of a bond.

Chugach Electric's opposition focuses principally on peremption and on irreparable harm to Chugach if the TRO is extended. Both these matters will be deal with separately.

A. Preemption does not Apply.

The fact that federal preemption does not exist in the case is discussed in the Motion to Remand. This discussion is repeated here.

(a) *Machinists* Preemption and Related Doctrines

First, the jurisdiction of this Court necessarily relates only to the Superior Court proceeding. What the RCA may or may not do is immaterial. Thus far, the RCA has taken no action beyond requiring CEA to respond to a complaint. Even if the RCA had acted, the RCA is not a party to this action. Chugach Consumers are not the RCA and surely have a predominant First Amendment right to request relief from the RCA -- or any other government body, for that matter – whether or not the RCA ultimately has the authority or inclination to act. The relief requested by Chugach Consumers is a review of a particular proposed labor agreements by the RCA, the actions of the management and Chugach Electric Board relating to that labor agreement, and the effect that the labor agreement will have on the rates charged to Chugach Electric Association rate-payers. If Chugach Consumers is correct, then certain excessive labor costs will be excluded from the rate base by the RCA. Chugach Consumers is acting in the interests of the Chugach rate-payers and is seeking this contract review as related to rates for whatever relief may be granted by the RCA under the circumstances. It is clear that Chugach Consumers are not seeking relief within the exclusive jurisdiction of the National Labor Relations Board ("NLRB"), and have filed a motion with the RCA to establish this point and ask it to clarify its jurisdiction. Chugach Electric appears to have a concern that the RCA will grant Chugach Consumers that relief they seek. If that happens, however, Chugach Electric's quarrel will be with the RCA, not with Chugach Consumers.

Second, Chugach Electric invokes federal preemption under *Lodge 76, Int'l Ass'n of Machinists and Aerospace Workers v. Wis. Employment Relations Comm'n*, 427 U.S. 132 (1976). *Machinists* preemption is clearly inapplicable. *Machinists* preemption, as Chugach Electric

notes, deals with areas intentionally left free of labor regulation. Under *Machinists*, state or local action is preempted if it regulates the use of economic weapons and interferes in "the free play of economic forces."

The difficulty here is that a brief delay in approving a collective bargaining agreement that already include provisions for retroactive wage increases has no obvious relationship to the "free play of economic forces." Nor is there any reason to believe that the signing or non-signing of a labor contract was an area intentionally left unregulated. Perhaps for this reason, Chugach Electric makes no such argument. Instead, it claims that the *RCA's* actions are likely to intrude on the bargaining process in some unspecified way. As noted, the RCA is not a party to this suit; and it has taken no substantive action.

Third, the Norris-LaGuardia Act has no relevance to the removal jurisdiction of this Court. The Norris-LaGuardia Act says nothing about state courts. "[W]hether or not Congress could deprive state courts of the power to give such [injunctive] remedies when enforcing collective bargaining agreements, it has not attempted to do so either in the Norris-LaGuardia Act or section 301." *Boys Markets, Inc. v. Retail Clerks Union, Local 770,* 398 U.S. 235, 247 (1970), quoting *McCarroll v. Los Angeles County Dist. Council of Carpenters*, 49 Cal. 2d 45, 63, 315 P.2d 322, 332 (1957), *cert. denied*, 355 U.S. 932 (1958). Norris-LaGuardia restricts the remedial power of this Court, if it would otherwise have jurisdiction. It does not address the powers of state courts, and it cannot be construed as a jurisdictional *grant* of any kind.

(b) *Garmon* preemption

Chugach Electric's only possible argument for jurisdiction is complete preemption under *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959). At first blush, *Garmon* seems a powerful weapon. As originally formulated, the *Garmon* doctrine held that any state action which intruded on matters "arguably protected or arguably prohibited" by the National Labor Relations Act was completely preempted.

However, the practical problems of reconciling state and federal spheres of activity have led to a complex set of accommodations. Thus, for example, *Garmon* does not apply where the State is acting as proprietor, rather than regulator because "[w]e have held consistently that the NLRA was intended to supplant state labor regulation, not all legitimate state activity that affects labor." *Building & Constr. Trades Council of the Metro. Dist. v. Associated Builders & Contractors of Mass./R.I.*, 507 U.S. 218 (1993). *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180 (1978) ("*Sears*") describes the appropriate inquiry.

As an initial matter, "Inflexible application of the [*Garmon*] doctrine is to be avoided, especially where the State has a substantial interest in regulation of the conduct at issue and the State's interest is one that does not threaten undue interference with the federal regulatory scheme." *Sears*, quoting *Farmer v. Carpenters*, 430 U.S. 290, 302 . Preemption depends on the "nature of the particular interests being asserted and the effect upon the administration of national labor policies." *Sears*, quoting *Vaca v. Sipes*, 386 U.S. 171, 180.

Sears described three relevant factors: (1) the presence or absence of a significant state interest in protecting its citizens from particular conduct; (2) whether or not the exercise of state jurisdiction over the particular claim actually involved a risk of interference with the regulatory jurisdiction of the NLRB; and (3) whether the issues in controversy in the state court are "identical to," or "different from" a hypothetical case presented to the NLRB.

In this Circuit, the relative importance of these factors depends on the proper characterization of the underlying dispute. *Chamber of Commerce* v. *Lockyer*, 463 F.3d 1076 (9th Cir. 2006) (*en banc*). Here, the conduct at issue is "arguably," rather than, "actually" subject to NLRB jurisdiction because whether or not Chugach Electric has "agreed" to the contract, for NLRA purposes, depends on a fact-intensive inquiry relating to the discussions and course of dealing between labor and management. *See, e.g., AFSCME Council 71 (Golden Crest)*, 275 NLRB 49 (1985); *Mid-Wilshire Health Care Center.*, 337 NLRB 72 (2001); *Seiler Tank Truck*

Service, 307 NLRB 1090 (1992). Accordingly, under *Lockyer*, the most relevant criteria are (1) and (2). However, even if the underlying actions were clearly subject to NLRB jurisdiction, the state court would not be preempted if factor (3) is implicated.

In the present case, none of these nice distinctions need be made, since all three factors unquestionably apply. (1) The state court was acting to preserve the jurisdiction of a state regulatory body with comprehensive powers over the business of electrical utilities, and to protect important state rights of consumers to be heard. (2) The TRO is not likely to interfere materially with the NLRB's jurisdiction. In fact, no party has requested action by the federal agency. (3) The issue put before the state court was the preservation of RCA jurisdiction and the rights of electrical consumers – plainly not matters of interest to the NLRB, nor similar to the proceedings which the Board would hypothetically conduct.

In *Textron Lycoming Reciprocating Engine Div., AVCO Corp. v. United Auto, Aerospace and Agricultural Workers of America, International Union and Local 787*, 523 U.S. 653, 663-666, 118 S.Ct. 1626, 140 L.Ed.2d 863 (1998), the Court held that a suit claiming that a collective bargaining agreement was voidable because of alleged fraud in inducing the union to sign the contract was not preempted by the National Labor Relations Act. Here, Chugach Consumers merely requested a review of the costs of the labor agreement and the manner it was negotiated, which is also not a preempted activity by analogy to *Textron*.

Accordingly, *Garmon* preemption is absent; and. under no possible analysis would the Superior Court's temporary restraining order be preempted by federal labor law.

B. There is no irreparable harm to Chugach Electric

In addition, there is no harm to Chugach Electric Association if the TRO is extended. Chugach states that it already has a binding agreement. If this is the case, then Chugach can immediately implement the work rules that it claims are causing it to lose money.

On the other hand the reality is that under Chugach Electric Board Policy 106 (Delegations of Authority from the Board of Directors to the Chief Executive Officer), [Exhibit __] the Chugach Board of Directors must approve all expenditures in excess of $1 million. The subject labor contract is clearly in excess of the CEO's spending authority and board action is required.

Also the court's attention is drawn to item 10 on page 4, "Labor Relations" which states that the CEO has delegation:

10a) To negotiate bargaining unit contracts and make appropriate recommendations to the board.

10b) To administer the approved labor contracts and see that appropriate managers and supervisors understand the provisions of the contracts and their administration.

Clearly the board has the final word and approval of these labor contracts not withstanding the conflicting claims of Chugach Electric.

CEA repeatedly argues, somewhat inconsistently, that (a) the issue is moot because the IBEW contract is already final and binding, (b) that it is committing an unfair labor practice by "repudiating" the contract to formally adopt the contract, and (c) that it is losing the supposed advantages of the contract.

All three of these dire predictions rest on a misstatement of the law. As Chugach Consumers have pointed our in their Motion to Remand, the existence or non-existence of a final agreement depends on a fact-intensive inquiry. Applicable Board precedent holds that either party to collective bargaining may place conditions on an agreement, such as the customary ratification vote of a union's membership, or approval by an employer's Board or owner. It would be impossible for parties to bargain if they could not do so through agents with limited authority, subject to final approval.

In support of its theory of a completed contract, CEA cites *Providence Alaska Medical Center* 19-CA-28803 (June 9, 2004). As an ALJ decision, not adopted by the Board, this has no precedential value. However, Plaintiffs agree with CEA that *Providence Alaska* contains a clear, useful, and unusually full statement of the law. The rule, as discussed in *Providence Alaska*, is that ratification may be required if the opposing party had "affirmative, clear and timely notice" of such a limitation on the bargaining agent's authority. *Providence Alaska*, quoting *Ben Franklin National Bank*, 278 NLRB 986 (1986).

In the present case, the parties are not naive newcomers to collective bargaining or the politics of the CEA Board. The IBEW is certainly aware that CEA is a cooperative and that all large contracts, including all collective bargaining agreements, have always required final approval by the Board. However, it is not necessary to rely on bargaining history.

The Tesch affidavit conspicuously fails to state that the CEA Bargaining Team was given final authority by the Board. To the contrary, she makes it very clear that:

> Tesch and Mede regularly reported to the Board of Directors in Executive Session regarding the progress of the negotiations. The Board of Directors was kept informed of numerous details of the bargaining process ***and made all significant decisions.***"

(¶ 5, emphasis added). Tesch avers that she and the other members of the Team were professionals with extensive bargaining experience. Therefore it seems unlikely that the Team would have failed to make the Board's decision-making role clear to the Union.

CEA's November 30 notice to the membership set a Board vote for December 6 on a "Tentative" agreement. *Plaintiffs' Motion to Remand, Ex. B.* Unless CEA was being deliberately deceptive to the Membership, the plain implication is that the contract remained tentative until ratified by the Board. Finally, no one, union or management, could fail to notice that the agreement posted on CEA's web site is clearly labeled "TENTATIVE" on its cover page and in outsize type. *Plaintiffs' Motion to Remand, Ex. C.*

Accordingly, the issue is not moot, and no arguable unfair labor practice is being committed. For that matter, if CEA genuinely believes that immediate implementation of the agreement would save the rate-payers significant money, it is free to manage its business under those terms. The restraining order says nothing about this subject. CEA may ultimately be sent back to bargaining. CEA, or the responsible parties, may be held to account for the difference, if its financial representations are disingenuous. Plaintiffs are not attempting to run CEA – only to have a chance to obtain a meaningful hearing from the RCA. Thus, CEA can manage as it pleases, so long as the contract remains "Tentative." However, Plaintiffs doubt that CEA truly expects labor costs will decline, since it has already informed RCA that, under the proposed new contracts, electric rates will need yet further "normalization." *Plaintiffs' Motion to Remand, Ex. A, p. 3.*

In addition it is necessary to examine Chugach Electric's claims that things were done in an open meeting, with all Board members fully advised.

Chugach Electric argues that "the Chugach Board of Directors passed a motion in open session" authorizing its bargaining representatives to make a specific offer to the IBEW Union (¶B.1., Page 8). In reality essentially none of the discussion or deliberation was in open session. The draft minutes [Exhibit B] show that the board went into an executive session for almost two hours before coming out and passing a motion that said nothing specific about what the offer was. Any member of the public sitting in the audience at that meeting would have known nothing more about it. And until the contract was placed on the internet on November 30, 2006, nothing more about the offer was known by the public members of Chugach Electric.

It should be noted that minority Chugach Electric directors Uwe Kalenka and Elizabeth Vazquez voted NO on the contract in the minutes for that meeting [Exhibit B] and they have been stridently and resolutely protesting the process and terms of the labor contract [KTUU Channel 2 News at 10 PM interview on Friday, December 15,

http://www.chugachconsumers.org/Lib/06-12-15%20Ch2LE%20CEA.wmv] "Contract is excessive, it's bloated, board has not taken the proper efforts to educate members as to the long term implications of this contract."

Chugach Consumers furthermore believes that even the board of directors knew little to nothing about the terms in the contract or the supposed work rule savings until the controversy broke out and forced Chugach Electric management to release some crumbs of information about the contract provisions to the public and the media.

Chugach Consumers analysis of the contract reveals that much of the information publicly being now discussed by Chugach Electric management is false, incomplete and not credible. Chugach Consumers is in the process of dealing with this false information in filings (both open and confidential) before the Regulatory Commission of Alaska, the body with jurisdiction that is most suited to act on the details and discrepancies of the misinformation being propagated by Chugach Electric.

Request for protective order for testimony by Ray Kreig

Ray Kreig is a former CEA director (May 1994 to April 2000; July 2005 to April 2006) and CEA board president (May 1995 to April 1997). Kreig is well familiar with a very detailed and extensive evaluation of the cost savings goals and opportunities undertaken during his term on the board that was presented to the board in executive session in January 2006.

CEA has recently taken rather extreme measures to stop directors from communicating or informing the CEA membership of key information needed by the membership to evaluate and make informed judgment and comments on labor negotiation options and other matters [Exhibit ___ ; ¶¶ 28-36]. CEA has threatened Kreig with legal action if he were to disclose information that CEA wants kept secret.

We will shortly be asking the Court for a protective order for Kreig and other CEA directors to give input to your Court.

Comments on CEA Claims of Work Rules Savings

10. Chugach Consumers has reviewed the Contract provisions and cannot find any changes to work rules that would result in significant, if any, savings, and believes that the $1,300,000 claimed to be wishful thinking at best.

For example, one of the revisions that Chugach claims will yield monetary savings once implemented (Tesch, paragraph 12) are Sections 5.1.2.1 and 5.1.2.2 "which makes changes favorable to management to the meal provisions of the contract."

5.1.2.1 specifies that employees shall be granted an unpaid meal period of at least thirty (30) minutes in duration between ½ hour before and 1 hour after the midpoint of the shift. To this, the following new provision has been added in the proposed contract: *A crew may choose to take an unpaid meal period of one hour; however, the end of the normal workday shall be extended by one-half (½) hour.*

Chugach Consumers has no objection to this addition to the contract. It gives the crew employees greater flexibility in choosing how they spend their time which should have a positive affect on morale. But as to saving money, it merely shifts ½ of hour of work to later in the day with no affect to the bottom line.

5.1.2.2 The original language is "When employees are reasonably close to their starting location or where a lunch is available, such as a restaurant, at the lunch time the Employer will allow the use of Employer's vehicle to travel to and from lunch."

To this have been added the words, "*provided employees travel on their own time.*"

The intent of this additional language is unclear. Originally this article was intended to make the Employer's vehicle available to employees during lunch under specified conditions. With the new language, then it would seem to mean that this free use of the vehicle may continue

only when the employee is on an unpaid lunch break, but would not be allowed under circumstances provided in other clauses where the employee is paid single-time and double-time during meal breaks. Chugach Consumers fails to see how the reduced vehicle use could result in any substantial savings.

Alternatively, if these additional words are meant to emphasize that the meal period begins when employees enter the vehicle to leave the worksite and not when they leave the vehicle to enter the restaurant, then there could be savings by being clear about when the lunch hour begins. However, the revision itself is not the source of the savings. The original intent of providing vehicles to employees during lunch obviously was as a convenience to them and never meant to extend paid hours to the period that they were in the vehicle. If charging travel time to lunch was interpreted in this way, it would seem that curbing such abuse was always in management's control and the savings, if any, of ending the abuse is not applicable.

Additionally, CEA has omitted reference to clauses that increase costs to ratepayers, beyond the excessive 6%, 5%, and 5% increases in 2006 – 2008.

Section 13.2 revised pension payments significantly increases Chugach's obligation. Currently, the pension contributions are $5.00 per hour, $1.33 paid by the employee through "movement of monies" and $3.67 per hour by Chugach. Under the new contract provisions, Chugach would pay all and their share would jump to $5.50 in 2006, $6.00 in 2007, and $6.50 in 2008 and 2009. During the 4 year period, the increases in Chugach's pension costs would be $1.3 million (based on 2005 hours worked by Outside Contract employees as provided to Chugach Consumers under the Information bylaw).

Section 4.4.6 that provides that *pension contributions shall be made on a regular employee's behalf up to a maximum of forty (40) hours of compensation per week each week the employee receives supplemental payments in addition to workers compensation pursuant to Section 4.8*

with contributions capped at a maximum of twenty-six weeks. This would add $5720 per applicable employee in 2006, $6240 in 2007, $6760 in 2008, etc.

Section 4.4.2 adds that whenever CEA requires medical verification certifying that an employee's absence was necessary for medical reasons, *"The employee shall receive one (1) hour compensation at the straight time rate (not counted as hours worked). The employee shall be reimbursed for physicians' charges not covered by the employee's insurance upon submission of all relevant documentation."*

Section 5.1.2.7 provides that "when an employee is required to work two (2) hours or more immediately following his regularly scheduled shift, or four (4) hours or more after a call-out, he shall be furnished a meal by the Employer on the Employer's time at the straight time rate. . . One-half (1/2) hour shall be permitted also at straight time if the employee eats after he has finished work, but the employee shall be permitted to elect to take in lieu of the meal furnished by the Employer, *$20.00* [increase from $15.50] and one-half hour at the double time rate."

Chugach Consumers believes that at their salaries, any employee would choose ½ hour at double-time plus $20.00 to ½ hour at single-time and a company paid meal. The 2 hours beyond shift is considered a common occurrence since out-of-town work requires the work of an additional 2 hours (5.2.9). Chugach Consumers estimates the increased meal allowance from $15.50 to $20.00 could cost about $12,000 per year. Additionally, the employee would be compensated for that ½ hour of double over-time meals at 6%, 5%, and 5% higher rates under the new contract, plus additional pension payments for the ½ hour of $.915, $1.165, $1.415 in 2006, 2007, 2008, respectively.

Sections 11.2.4 and 11.2.6 increased tool and clothing allowances increasing costs $7,650.

Ray Kreig has knowledge of the labor contract study presented to the board in January 2006. He states unequivocally that none of the major work rules reforms costed in that document are in the

proposed tentative contract. He believes that no credible evidence for the $1.3 million in supposed savings from work rule changes has been presented by CEA.

In addition, the work rules revisions set forth in paragraph 13 of Mary Tesch's Affidavit are not quantified, but would not result in material savings in any event, if at all. In fact, some will cost CEA money. A brief response to these items follows:

8.11 Random Drug Tests doesn't kick in until non-represented have a program, so not yet in force.

3.5.1 Laying off apprentices last if ratios maintained is a win for everyone, CEA, IBEW, and apprentices.

5.1.3.4 Sunday shift has a cost associated with it -- 10% more paid on Sunday than on Saturday. But may reduce Sunday overtime. Seems like a wash.

4.3.1(b) Employee to pay pro-rata share of monthly health-care premiums after incurring 40 hours of UNAPPROVED Leave without Pay, after exhausting their annual leave (4-6 weeks /year). Note, an employee may receive up to 60 days of approved leave without pay before this kicks in (Section 4.3.1(a) and it doesn't apply to medical reasons. There is no saving here to Chugach.

If the leave without pay has been approved, then this section would not apply. The concept of employees paying for a benefit when they are not working nor on annual leave or holiday is good, but the reality of it is that an employee would have to be on leave without pay for 3 months before being required to contribute anything towards their health care premiums in any given year.

Financial impact minimal, unless CEA has a severe problem with people taking extensive leaves without pay. At most, it would save the company less than $50 a day for that hopefully rare occasion where an employee has used up all their annual leave (4 weeks after the first year increasing annually to 6 weeks after 5th year), all of their approved leave without pay (up to 60 days), plus another week of unapproved leave without pay. This is not a major concession unless CEA is maintaining a large workforce on unapproved leave.

4.4 Sick Leave is that under 4.4.2 CEA has added that whenever CEA requires medical verification certifying that the employee's absence was necessary for medical reasons, *"The employee shall receive one (1) hour compensation at the straight time rate (not counted as hours worked). The employee shall be reimbursed for physicians' charges not covered by the employee's insurance upon submission of all relevant documentation."*

The rolling five (5) year period seems more to reset the clock for the employee and allow them to start over rather than curb the abuse of sick leave. Plus the above added wording seems to mean that CEA will pay the employee for confirmatory doctors visits and medical cost shortfalls.

Dated this 18th day of December, 2006.

By: /s/ Kenneth P. Jacobus

/s/ Kenneth P. Jacobus
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served on the persons named below as indicated on this 18th day of December, 2006.

Robert K Stewart (Electronically and fax to 257-5377)
David, Wright, Tremaine LLP
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Anchorage Alaska 99501

Kenneth P. Jacobus

CHUGACH ELECTRIC ASSOCIATION, INC.

BOARD POLICY: 106 **Date: June 18, 2003**

DELEGATIONS OF AUTHORITY FROM THE BOARD OF DIRECTORS TO THE CHIEF EXECUTIVE OFFICER

I. OBJECTIVE

To define the delegations of authority from the Board of Directors to the Chief Executive Officer to enable adequate direction of the operations of the Association and to report to the Board on the results achieved.

II. CONTENT

A. Planning

1. Policies

To formulate with his/her staff, as appropriate, the Board policies to be recommended to a committee of the Board for their consideration and to participate with the Board Operations Committee and the Board in the development of Board policies. To formulate, in consultation with the Board of Directors and staff, the Operating Policies of the Association. Such policies shall be reviewed by the Chief Executive Officer as periodically necessary and a report made to the Board or a Board Committee.

2. Objectives

To develop, in consultation with the Board of Directors and staff, goals and objectives of the Association for presentation to and approval by the Board of Directors. To review annually these goals and objectives, as well as the results achieved.

3. Short-Range and Long-Range Plans

a. To conduct studies, with staff and outside consultants if necessary, and recommend to the Board of Directors short-range and long-range plans, including plans in such areas as power supply, power requirements and load forecasts, need for generation and transmission facilities, procurement of fuel, financing, energy

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7. Overtime

To ensure that overtime is controlled and to report annually to the Board on overtime as a percent of payroll compared to previous years and the results of the efforts to control this expense.

8. Consultants

To select and retain consultants, other than the firm performing the independent financial audit. The selection of any consultants working in areas which affect the functions of the Board requires the approval of the Board.

9. Wage and Salary Administration

a. To develop a systematic wage and salary plan for non-bargaining unit employees and present it to the appropriate committee of the Board of Directors for its review and for them to make an appropriate recommendation to the Board regarding its approval.

b. To determine all salary adjustments, except the Chief Executive Officer's, within the Board-approved wage and salary plan and policy and within the limitations of the budget. A report is to be provided to the Board annually on the administration of the wage and salary plan.

c. To evaluate new positions and reevaluate existing positions. If their responsibilities and authorities substantially change, and if appropriate, place these positions in the Board-approved wage and salary plan.

d. To conduct labor surveys, as necessary, to determine wages and salaries paid for comparable jobs in the area in which the Association recruits personnel, and make recommendations to a committee of the Board of Directors on any revisions required in the wage and salary plan for non-bargaining unit employees, taking into account the financial condition of the Association.

10. Labor Relations

a. To negotiate bargaining unit contracts and make appropriate recommendations to the Board.

b. To administer the approved labor contracts and see that appropriate managers and supervisors understand the provisions of the contracts and their administration.

2. Membership Services

To direct appropriate and efficient membership services in such areas as, but not necessarily confined to, public and member relations, load management, energy conservation, marketing communications, and research.

3. Legislation

a. To develop and carry out, consistent with Board policy 121, a legislative program furthering the Association's objectives and policies. Such a program will include, but not be limited to, research, preparation of testimony, presentation of testimony before appropriate committees, consultation with members of Congress, the state legislature, and state and federal administrative and regulatory agencies.

b. To participate with allied groups to obtain their increased understanding and support of the Association's legislative and regulatory objectives and programs.

4. Financial

a. To administer the approved budget, including approval of non-budgeted items or budget changes of not more than $1,000,000 or all non-budgeted items which, in his or her judgment, are vital to effect unanticipated emergency maintenance or repairs. Non-budgeted items or budget changes exceeding $500,000 must be reported to the Board of Directors.

b. To invest or reinvest funds, cash investments when due, and cash government bonds when, and if, necessary to protect the Association's cash position, and to carry out an effective cash management program.

c. To authorize and approve the travel expenses of personnel, except the Chief Executive Officer's, on company business within the limitations of the budget and within established policy. All such expenses shall be supported by itemized expense accounts with receipts attached, as appropriate. Expenses of the Chief Executive Officer will be approved by the Chairman of the Board or the Treasurer of the Board prior to payment.

d. To approve accounting systems, procedures, statistics and types of reports necessary for sound financial management of the Association, and to meet the requirements of lending and regulatory agencies and for necessary control, information required by the

CHUGACH ELECTRIC ASSOCIATION, INC.
Anchorage, Alaska

November 8, 2006
4:00 p.m.

SPECIAL BOARD OF DIRECTORS'
MEETING MINUTES

The special meeting of the Board of Directors of Chugach Electric Association, Inc. was called to order at 4:13 p.m. in the boardroom of Chugach Electric Association, Inc., 5601 Electron Drive, Anchorage, Alaska.

The following board members were present:

Jeff Lipscomb – Chairman
Bruce Davison – Vice Chairman (not present)
Jim Nordlund – Secretary
David Cottrell – Treasurer
Alan Christopherson – Director
Uwe Kalenka – Director
Elizabeth Vazquez – Director

The following employees, members, and guests attended:

Bill Stewart
Hap Anderson
Mike Anderson
Charles Baird
Larry Bell (IBEW)
Patti Bogan
Jon Cason
Al Christenson
John Cooley
Jeff Corcoran
Mike Cunningham
Pat Domitrovich
Tom Drake
Jackie Endlsey (IBEW)
Brad Evans
Mike Fenwick
Kim Floyd (MEA)
Rick Freymiller
Mike Fulton
Jim Hamilton
Margaret Hansell
Carol Heyman
Mark Hodsdon
Ed Jenkin
Carol Johnson
Dan Knecht
Mark Krieger
Julius Matthew
Bill Mede
Joe Miller
Chris O'Brien
Connie Owens
Mike Snell
Dave Reaves
Tom Schulman
Mark Sickles
David Smith
Brett Straub
Scott Swartzbauer
Mary Tesch
Lee Thibert
Ken Thomas
Amber Van Treeck
Adam Vogel
Sheldon Wardell
John Watsjold

DeAnna Scott, Executive Assistant, recorded meeting proceedings.

Chairman Lipscomb asked CEO Stewart to inform the audience of the exits in case of a fire or fire drill.

Chairman Lipscomb wanted to discuss a couple of procedural items.

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A. **Board Calendar**
Director Kalenka advised the Board of the Alaska's Miner Association Conference and Trade Show that is currently being held at the Egan Convention Center and wanted to have it placed on the Board Calendar for 11/10/06.

B. **Insurance Application**
Chairman Lipscomb informed the Board of the Not-For-Profit Individual and Organization Insurance Policy Renewal Application. Director Vazquez stated that there are only two issues on the agenda and we are going into other matters that are outside of those issues. Director Lipscomb stated he was looking for the Board's indulgence because it just these two questions so we could get this application done and out of the way. Director Lipscomb stated if the Board would rather defer this to the next meeting. Director Vazquez stated she would like to have a copy of the whole policy prior to answer the questions. This item was deferred to the next Board of Directors' Meeting.

I. **Labor Negotiations**
Larry Bell, Business Manager, IBEW Local 1547, addressed the Board of Directors regarding the labor negotiations.

II. **Executive Session**
At 4:30 p.m., Director Vazquez moved and Director Kalenka seconded the motion that pursuant to Alaska Statues 10.25.175(c) (1) and (3), the Board go into executive session to discuss: (1) matters the immediate knowledge of which would clearly have an adverse effect on the finances of the cooperative; and (3) matters with its attorneys the immediate knowledge of which could have an adverse effect on the legal position of the cooperative. The topic to be discussed in this executive session is: Labor Negotiations with IBEW Local 1547. The motion passed unanimously.

The Board came out of executive session at 6:22 p.m.

Director Christopherson moved and Director Cottrell seconded the motion to authorize Chugach bargaining team to proceed as discussed in Executive Session. Chair Lipscomb, Directors Cottrell, Christopherson, and Nordlund voting yes. Directors Vazquez and Kalenka voting no. Motion passed.

III. **ADJOURN**
At 6:27 p.m., Director Cottrell moved and Director Nordlund seconded the motion to adjourn.

Approved: Jim Nordlund, Secretary
Date approved: December 20, 2006

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