

STATE OF ALASKA

BEFORE THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Kate Giard, Chair  
Dave Harbour  
Mark K. Johnson  
Anthony A. Price  
Janis W. Wilson

CHUGACH CONSUMERS and )  
RAY KREIG )  
 )  
Complainants )  
 )  
v. )  
 )  
CHUGACH ELECTRIC )  
ASSOCIATION, INC. )  
 )  
Respondent )  
\_\_\_\_\_ )

U-06- \_\_\_\_\_

**EMERGENCY COMPLAINT AND REQUEST FOR IMMEDIATE  
RESTRAINING ORDER (SEE ¶ 49)**

Chugach Consumers and Ray Kreig [Chugach Consumers] file this urgent complaint against Chugach Electric Association, Inc. [CEA] and request that the Regulatory Commission of Alaska [RCA] issue an emergency order preventing substantial and irreparable harm to its member consumers if CEA were to ratify as planned a proposed, grossly excessive, unfair and unreasonable four year labor contract with the International Brotherhood of Electrical Workers Union Local 1547 [IBEW Union] currently scheduled to occur at its December 6, 2006 Special Board Meeting. This matter is of statewide significance because the Chugach Electric IBEW Union labor contract will set precedent for all other subsequent electric utility contracts.

## PARTIES AND JURISDICTION

1. CEA is a public utility subject to regulation under AS 42.05. Under AS 42.05.381, public utilities such as CEA are only allowed to charge rates for utility services that are just and reasonable. Pursuant to AS 42.05.141(a)(3), the RCA is charged with ensuring that CEA's rates are just, fair and reasonable and to investigate upon complaint and to require a public utility to file reports and other information and data. Under AS 42.05.511 the RCA may investigate the management of a public utility and its wage and salary scales and agreements for the purpose of determining inefficient or unreasonable practices that adversely affect the cost or quality of service of the public utility. Where unreasonable practices are found to exist, the RCA may take appropriate action to protect the public from inefficient or unreasonable practices and may order the utility to take corrective action.
2. Chugach Consumers was formed in 1996 to advocate for the general public interest of CEA ratepayers and to educate consumers. It is a group of fiscally-concerned CEA ratepayers and others that support safe, reliable, low cost power for South Central Alaska. Chugach Consumers is active in CEA affairs under Power of Attorney of its chairman, Stephen Routh [CEA member #48527].
3. Ray Kreig [Kreig] is vice chairman of Chugach Consumers and is also a former CEA director (May 1994 to April 2000; July 2005 to April 2006) and CEA board president (May 1995 to April 1997). Kreig has also served on the Alaska Rural Electric Cooperative Association Board of Directors, Executive Committee, 1995 to 1998. Kreig is a member and an electric consumer of CEA [#107412].

## WHY IS THIS AN EMERGENCY?

4. CEA has indicated that it will sign a four-year labor agreement with IBEW on December 6. If it does so, the issues raised here will be moot. The labor rates adopted in the agreement, once effective will – through the processes of rate "normalization" and CEA's "labor cost allocator" immediately be reflected in higher rates paid by ratepayers without action by the Commission and, indeed, without any possibility of correction by the Commission. The gist of this Complaint is a breach by CEA's Board of their fiduciary duties of loyalty, prudence and diligence. Once the contract is executed, those breaches become irreparable. If execution of the agreement is temporarily restrained, no party will be damaged, since the contract changes will already be either (a) retroactive (b) to take place at a future date certain, or, failing either of these, compensable in money through rate increases which would be required, in any case.

## FACTS

### Immediate issue: IBEW Union labor contract

5. On November 30, 2006 CEA posted notice of a special meeting of its board of directors on its website [[Exhibit A](#)]. This is the only known notice CEA has made to its membership and it contained a link to the proposed Outside Plant Personnel contract with the IBEW Union [[Exhibit B](#)].

### CEA costs and economic efficiency

6. CEA has historically charged very high non-fuel rates to its customers compared to national averages for electric utilities of a similar system configuration. For example, in 1992 it was charging distribution customers 3½¢ per kwh above the wholesale cost of generated power and transmission while national norms for systems of similar customer

usage and service density were paying about 1¼¢ per kwh. The situation has changed little recently with CEA charging 4½¢ per kwh in 2004 while norms for similar systems nationally are in the 1½¢ per kwh range [[Exhibit C](#)].

7. CEA has compensated its employees extremely well. The trendline for cooperatives nationally shows CEA to be near the top of a high cost pinnacle both in 1992 (200% above average) and in 2004 (157% above average) [[Exhibit D](#)].

Additionally, CEA's generous work rules have them working fewer hours.

8. For the short and medium term, labor expense is the largest cost of service category that CEA management and board have the ability to lower. While yearly operations labor expense is only 17% of the Total Cost of Electric Service, it is 65% of what is effectively controllable by the current board and management [[Exhibit E](#)]. Half of the rates paid by consumers is fuel and half of the remainder is for debt service incurred in the past.

9. But labor is also a part of past and present capital construction that is paid off in debt service over several generations of ratepayers. Those debt costs are also adversely affected by CEA labor contracts with the IBEW Union because they contain clauses that restrict competition and raise the costs of the projects above what they would otherwise be in a free, open and competitive market:

Section 2.13.3 Union Signatory Clause  
(a) In order to preserve work traditionally performed by bargaining unit members, the Employer shall require that contractors for new construction involving any electrical work normally performed by employees covered by the Outside Agreement which is to be done at the site of construction of transmission lines, distribution lines, substations, SCADA

systems, and inside wiring, become signatory to a current collective bargaining agreement with International Brotherhood of Electrical Workers Local 1547 if they are the successful bidder on a project. [[Exhibit B page 8](#)]

10. Labor costs on past capital projects probably make up about 30% of current debt service. Therefore labor, both capitalized and expensed, makes up about half of the non-fuel Cost of Electric Service.

11. For a utility like CEA that has high labor costs this is the area where the biggest easily achievable opportunity for consumer savings lies.

12. And consumer savings from more reasonable utility bills are the most important to low income and retired in our community because utilities comprise a larger part of their expenses than any other segment of the population.

#### IBEW Union/CEA employees and cooperative elections

13. We have to address one subject that raises fundamental issues of chronic conflict of interest: CEA elections. When the IBEW Union and Chugach employees spent \$200,000 this spring to secure two Chugach Electric board seats and change the board environment for consideration of their labor contract it's obvious that the time for heroic citizen action trying to reform Chugach Electric is over. This kind of special interest force is a crushing burden for any citizen or group of citizens trying to protect the member interests in the CEA board room. Chugach Consumers experience at this point believes that the electric ratepayer's only hope for fair dealing and justice now has to be in the hands of the RCA, the courts, and the legislature.

14. There is a long history of intense IBEW Union and CEA employee involvement in the affairs of the CEA board of directors and in cooperative elections [[Exhibit F](#)].

15. There have been IBEW Union members and spouses of IBEW Union CEA employees actually sitting on the CEA board. IBEW Union lineman Jo “Mike” Fenwick was on the CEA board from 1983-1988. He was board president in 1987 during the CEA IBEW strike. Lace Walls was also on that board while her husband Larry was an IBEW Union dispatcher working for CEA and on strike. Sam Cason sat on the CEA board from 2002 to 2005 during the period when his brother Jon was an IBEW Union lineman working for CEA.

16. The IBEW Union and CEA employees have spent large amounts of money electing their candidates to the CEA board [\[Exhibit F\]](#). There are over 800 electric cooperatives across the U.S. and it is virtually unique to CEA and Matanuska Electric Association that the IBEW Union and utility employees engage in such massive interference with an electrical cooperative's member elections. A management consultant to the CEA board in the 1990's said:

“The kind of money being spent on (Chugach) elections is obscene and is making this board look like the US Congress.” [\[Exhibit F page ??\]](#)

17. The biggest IBEW Union CEA employee election blitz ever occurred this spring when they spent an estimated \$200,000 to replace Kreig with Jim Nordlund and retain Jeff Lipscomb for the labor contract decisions being made now (next Wednesday) [\[Exhibit F\]](#).

18. No company can run efficiently when the managed take over the supervisory organs of the utility. The result of IBEW Union influence on the CEA board

[\[Exhibit G\]](#) has been a series of passive, weak boards on labor negotiations. And now we have a board that acts like it is shoveling money out the door hand over fist to the IBEW. Costs to the electric consumer have consequently been much higher than necessary.

#### Petition to Declare Certain Documents Confidential

19. CEA claims that certain information and documents necessary for RCA consideration of the issues in this Emergency Complaint and Request for Immediate Restraining Order are confidential. In the remainder of this document ★★★ indicates that material has been redacted which may be found in the separate Petition to Declare Certain Documents Confidential. Chugach Consumers and Kreig believe that much of what CEA designates as legal advice is actually business advice and thus not subject to privilege.

#### 2006 CEA Labor Negotiations

20. In August of 2005 the CEA board replaced its outside labor advisors and tasked the new ones (Parry Grover and Bill Mede) with preparation of ★★★

21. The report, ★★★

22. Even so there was not time ★★★ So, for example, the present IBEW agreements are not competitive in contracts with utilities. The union has admitted that non-IBEW Union capital contracting labor costs would be 25 to 40% less [\[Exhibit H\]](#). The IBEW can compete and has shown a willingness to do so when it must. When the IBEW Union has to compete it cuts its rates 20 - 30% (Alyeska Pipeline project agreement, Copper Valley Sheep Mountain Line Extension) [\[Exhibit H\]](#).

23. Looking at the proposed labor contract CEA can't have done much to apply

comparisons of all positions to the local Anchorage job market. Only 10% of CEA positions are power linemen. 60% of Chugach Electric employees are office workers as secretaries, clerks, managers, information services employees, customer service reps, accounting, etc. The remaining 30% are warehousemen, meter readers, mechanics, technicians, operators, dispatchers, etc. Most of these should be freely available in the open South Central job market. CEA has no business escalating by 25% the wage structure that let a Power Plant Warehouseman be paid \$133,176 in wages and benefits without reforming the work rules that allow this. There is no reason for all overtime to be at double time. Matanuska Electric negotiated their IBEW Union contract and reduced much of their overtime to the normal time and a half.

24. The ★★★ Kreig said that management of any private company could not fail to act on what was seen.

25. It became obvious that CEA ★★★ had no intention of undertaking the effort ★★★ Several directors (Kreig, Uwe Kalenka and Elizabeth Vasquez) felt that, in any event, the economic data ★★★ was key information that was crucial for any public understanding of this, the most important issue that directly affected their rates. They believed that this information should be made public so that CEA members could give informed input to the board. These directors were also quite alarmed at the very large amount of money that would ★★★.

26. As it turned out, things were to get much worse. The contract offer made [\[Exhibit B\]](#) by the CEA board on November 8, 2006 and accepted by the IBEW Union is far, far costlier for CEA ratepayers than even ★★★ It reflects, not only lack of diligence, but a fundamental conflict of interest between directors promoted, and effectively nominated



by IBEW and the interests of CEA ratepayers. The contract length was extended to an unprecedented 4th year (conveniently beyond the term of any reform director that could be elected next spring). They did respond to public disgust and ended paid holidays on employee birthdays -- but then cancelled any ratepayer benefit by adding an extra free floating holiday.

27. CEA management has asserted that it cannot ★★★ simultaneously breaches the Board's duties of diligence, prudence, and loyalty.

Extreme CEA measures to stop director motions to inform membership

28. On April 11, 2006 director Elizabeth Vasquez [Vasquez] asked CEA board chairman Alan Christopherson to add two topics to the public agenda of the April 19, 2006 regular CEA board meeting: 1. Release of information needed by the membership to evaluate and make informed judgment and comments on labor negotiation options; 2. Release benchmarking and other related documents. The economics ★★★. Chairman Christopherson stated he would not allow Kreig to address the board about the ★★★ even though it would be behind the closed doors of an executive session but that Kreig could distribute it to the directors [[Exhibit I](#)]. This attempt at silencing discussion of an unwanted motion also was unprecedented behavior by a CEA chairman. Kreig stated it had never occurred before in his 15 year experience at CEA.

29. The CEA board has a 7 day rule for advance calendaring of agenda items so the public can be notified of topics in advance. It can be waived but is preferable not to. When the board packets went out without these two items added to the agenda Chairman Christopherson stated that all mention of them would occur in executive session. Kreig and Vasquez did not think this was acceptable public notice and they

were faced with the unprecedented situation of a CEA board chairman refusing to place timely submitted motions on a CEA board agenda. The only remedy was for directors Uwe Kalenka, Kreig, and Vasquez to notice a special meeting of the board for April 19 [\[Exhibit J\]](#) to ensure that the subjects were publicly known. Kreig and Vasquez were warned by CEA that the motions themselves [\[Exhibit K\]](#) must not become public or be made in public (although they are in fact quite innocuous). They would raise issues with the membership of why CEA is acting in such a scorched earth way to keep them secret.

30. Late in the afternoon of April 18 Chairman Christopherson suddenly cancelled the board meetings scheduled the next day, apparently to prevent the disclosure motions above from being made. It was pointed out that since the special meeting was called by directors because the Chairman failed to include the two agenda items in the regular meeting, he could not cancel the special meeting. Directors Kreig, Vasquez, and Kalenka attended that meeting the next day and since the other four directors (Chairman Christopherson, Jeff Lipscomb, Bruce Davison, and David Cottrell) didn't show up the meeting was adjourned by the three directors present under the CEA bylaws to April 26, 2006.

31. The April 26 adjourned special meeting did occur in the middle of the renoticed regular board meeting that had been cancelled. Kreig had been warned by CEA General Counsel through Chairman Christopherson not to make any motions in public before the board went immediately into an executive session, which lasted over an hour. Immediately on leaving the executive session, before Kreig could make the first motion, director Bruce Davison made the non-debatable motion to adjourn the special

meeting which carried 4-3 (YES: Christopherson, Davison, Lipscomb, Cottrell; NO: Kreig, Kalenka, Vasquez).

32. Because of the urgency and importance of these two disclosure motions, Kalenka, Kreig and Vasquez also noticed a third special meeting to take place on April 27 right before the scheduled CEA annual general membership meeting. It was not known whether the four directors that had boycotted the April 19 regular and special board meetings would also not show up for the April 26 meeting. Since three days notice was required, it had to be done before the April 26 meeting. The same four directors that didn't appear for the April 19 meetings (Christopherson, Davison, Lipscomb, Cottrell) also boycotted the April 27 special meeting although they did attend the member annual meeting an hour later.

33. How these four directors coordinated their actions on April 18, 26 & 27 concerning what to do at these three meetings without a violation of the Alaska Open Meetings law is not known. No serial communications are allowed that involve more than three directors. Minutes for these three special meetings are included in [Exhibit L](#) along with an email indicating Chairman Christopherson's attitude.

34. During the summer and fall of 2006 labor negotiations continued with the IBEW Union. Directors Vasquez and Kalenka report that they were very frustrated obtaining the information they needed to evaluate what was transpiring. CEA started giving the directors only oral briefings in the executive sessions. Any materials distributed were collected at the end of the executive session. Even after protest that the subject was of large financial impact and importance as well as complex and that they can not do the job they were elected to do, it is our understanding that they still were being refused

information on the contract and proposals.

35. This apparently continues to this day. Even the board vote on November 8 to “make the offer” to the IBEW Union that was accepted was done with nothing in the hands of the directors to evaluate. Kalenka and Vasquez report that they never saw the contract or a detailed listing of what the board was supposedly offering or voting on in the November 8 vote when they left executive session. They first saw that contract the same time it was posted on the CEA website November 30, only six days before it was planned for them to have to vote on it. Kalenka says their persistent requests for economic analysis and information after November 8 have been adamantly refused.

36. Kreig and Chugach Consumers find this to be appalling and slipshod. Kreig states that not allowing current directors to study and preserve executive session material is absolutely unprecedented in his 15 year experience at CEA.

#### CEA attempts to disrupt institutional memory of the CEA board

37. In the last five years CEA has intensified a very strenuous effort to suppress key information needed by the board itself, as well as CEA members. The trend appears to be a desire to ensure that the CEA board have no real institutional memory. Management can rely on the IBEW Union and CEA employees to get rid of inconvenient directors by dumping enormous amounts of money in elections and if the directors can be stripped of their records and no notes or tapes exist of executive sessions then management can pitch anything it wants in closed session and it would be virtually impossible for any directors to later effectively question what they were told before an important, complex or costly decision was made. These directors tend to be lay people and managers can have an easy time with them in this environment.

38. Chugach Consumers and Kreig have continually sought to bring comparative cost data to the board and public attention and been thwarted [[Exhibit M2](#)]. Half a million dollars of benchmarking studies paid for by the CEA ratepayers in 1995 to 1999 remain secret. These should be released immediately.

39. CEA has restricted CEA directors access to their files of executive session deliberations after they leave office. These directors are still responsible for their decisions while on the board and it is not reasonable for them to let loose of their files. CEA passed a Board Policy 128 stripping directors of their executive session files and sent recovery letters to ex-directors. That policy was wrong and was repealed by the board on February 15, 2006 but two months after the IBEW Union financed campaign placed its candidates on the board it was reinstated again on June 21, 2006 [[see Exhibit N](#)].

40. Last year CEA tried to get the membership to approve a bylaws change ending the requirement for recording board meetings. It failed.

41. Another very important example of CEA abuse of executive session secrecy is the Southern Intertie. CEA management and the IBEW Union heavily promoted this uneconomic transmission project to the CEA board when Kreig was president. He had a thorough cost-benefit study done which determined the project was not in the best interest of CEA members. That study was presented in executive session to the CEA board in 1998. Unbeknown to the board, CEA management had the same consultant issue another study to the public EIS process that more than doubled the benefits to show it to have a net positive value. This deception was not discovered until four years later ([Exhibit M](#)) when then ex-CEA director Kreig matched the public version of the

report to the one he retained in his personal files.

42. Kreig urgently pressed CEA management for an explanation and at a meeting at CEA on November 18, 2002 Kreig was ordered by acting CEA general manager Lee Thibert not to talk to any CEA director about the report because it was still executive session material and Kreig was no longer on the board (having not run for reelection in 2000). Kreig was told he could not even speak about that report or even its existence to any CEA staff member. Fortunately Kreig ignored that order.

43. Two days later CEA Director Chris Birch defied the protests of CEA attorney Carol Johnson at the November 20, 2002 board meeting when he made a successful public motion to release the more accurate secret study. In the ensuing public uproar the Southern Intertie project was killed and \$68 million dollars was saved from wastage.

44. CEA apparently didn't like this experience or an earlier one where management had failed to provide an economic study of the IBEW Union labor contract done in 1998 to the 2002 board that was considering a costly contract rollover instead of the same reforms in the Black Book. Kreig tried then to inform the board but was stopped by CEA attorneys.

45. The final example illustrating the deleterious effect of excessive secrecy on CEA board decision making is that of CEA's entry into the internet service provider business, Chugach.net. This was another project pitched to the CEA board entirely in executive session. In response to skeptical questions ★★ Ultimately Chugach.net had to be closed out at over a \$3million loss to CEA ratepayers. Kreig believes that if those executive sessions had been taped, CEA management would have been more careful

what they told the board.

Expensive IBEW Union contract not included in 2007 Budget

46. On November 29, 2006 the CEA board Finance Committee met and passed the 2007 operating budget to the full board. Directors Kalenka and Vasquez apparently objected strenuously and voted against the budget for among other reasons the refusal of CEA management to put the cost of the IBEW Union contract just accepted in the budget. They passed the budget as if no increases from the labor contract were expected. If the board takes up the IBEW Union contract on December 6<sup>th</sup> there is no information for the public to know what it will cost.

47. This labor contract is going to have massive affects on the rates charged by CEA. The RCA should take notice of CEA's current rate case filing TA279-8. Hidden deep in the filing (document 1002200613571017) dated 9/29/2006 on pdf page 520 (the Balance Sheet Allocation manual, MRC-09 page 21) are five indirect and direct labor allocators that will spread the affects of this big increase in the proposed labor contract throughout the entire CEA budget.

48. Chugach Consumers and Ray Kreig also strenuously object to this bizarre separation of the budget process from a very costly labor give-away. CEA management obviously has to know what those numbers are.

REQUEST FOR RELIEF

49. Immediate order to prohibit CEA from ratifying the proposed contract with the IBEW Union until the RCA can consider and rule on this complaint.

50. Order CEA to do a comparison study of all positions to the local Anchorage job

market. Only 10% of CEA positions are power linemen. Many of the rest are certainly freely available in the South Central job market. CEA has no business escalating by 25% the wage structure that let a Power Plant Warehouseman be paid \$133,176 in wages and benefits without reforming the work rules that allow this. There is no reason for all overtime to be at double time. Matanuska Electric negotiated their IBEW Union contract and reduced much of their overtime to the normal time and a half.

51. Order that all CEA labor contracts must require approval by the RCA. Such RCA approval should not occur until the RCA has satisfied itself that a true, good faith and aggressive negotiation on behalf of the rate payers has actually taken place. Full sunshine bargaining is probably not necessary but much more information needs to be released on the operating efficiencies related to this issue. CEA's one-sentence assertion (in a 1000 page tariff submission) that rates will be "normalized" to labor costs is a completely inadequate, and fundamentally misleading, disclosure of CEA's largest variable cost and the actual rates likely to be charged to consumers.

52. The RCA should require that reform of the CEA labor situation be added to the current rate case. In 2001 CEA filed a massive rate case at the RCA asking for a 6.5% increase. This case cost millions of dollars for all parties involved. Now another rate case is in progress. It should be obvious that CEA is little interested in controlling its largest "controllable" non fuel cost, labor.

53. The RCA should conduct an urgent investigation of ★★.

54. The RCA should investigate the matters discussed above and order reforms.

55. Order that all CEA executive sessions be taped and the tapes released on a schedule and by categories similar to the practice of the Anchorage Assembly.



56. Order CEA to stop trying to confiscate the records of directors either while on the CEA board or after they leave. It is understood that these records are to be kept confidential by said directors but the RCA should order a more reasonable secrecy schedule than the current "secret for ever and for life" that CEA believes in. This is not good public policy and it is not good for the members of CEA. It hardly complies with the spirit or purpose of the Sarbanes Oxley reforms.

57. The RCA should order the release of the items in the two motions that were frustrated by the meeting boycotts and heavy-handed lawyering by CEA against directors. Most of the items are included on the CD with the accompanying Petition to Declare Certain Documents Confidential.

58. A protective order for Kreig and other CEA directors to talk to the RCA, the court system and to CEA members.

59. Order CEA to get approval for any legal expenses above \$10,000 in opposition to the Emergency Restraining Order and above an additional \$20,000 for all other items in this filing. CEA can otherwise be expected to continue its scorched earth reckless spending of CEA ratepayer money fighting legitimate disclosure of information needed by the members.

60. Take steps to ensure that the position of CEA consumers and all other Alaska electric utility consumers is represented adequately in this matter. Chugach Consumers have limited resources compared to a determined utility like CEA that can pass any cost on to the consumer unless carefully monitored.

61. Chugach Consumers does not know all the facts at this time. We believe further discovery will demonstrate that the situation is even worse than currently shown by the

public record. We request permission to add items to this request for relief.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of December, 2006

LAW OFFICES OF KENNETH P. JACOBUS. P.C.  
Attorney for Chugach Consumers and Ray Kreig



E-mail: [kpjlaw@yahoo.com](mailto:kpjlaw@yahoo.com)

#### VERIFICATION

I, Ray Kreig, being first duly sworn, state that the allegations of the complaint are true and correct to the best of my knowledge and belief.

Ray Kreig

SUBSCRIBED AND SWORN to before me a Notary Public in and for the State of Alaska this 4<sup>th</sup> day of December, 2006.

Notary Public in and for Alaska  
My Commission Expires \_\_\_\_\_

#### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served on the persons named below in person on this 4<sup>th</sup> day of December, 2006.

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