

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

CHUGACH ELECTRIC  
ASSOCIATION, INC.,

Plaintiff,

v.

RAY KREIG, STEPHEN ROUTH  
and CHUGACH CONSUMERS,

Defendants.

Case No. 3AN-06-13743 CI

**ORDER re: Motions for Extension of Time & for Immediate Reconsideration**

The court has received defendants' Reply to Opposition to Motion for Extension of Time and Motion for Immediate Reconsideration. It is true the court earlier today denied the Motion for Extension based only on the Motion and the Opposition. The court now considers the Reply, and again denies the Motion.

Mr. Kreig was in court when the court issued its order requiring him to return certain documents and otherwise prepare a list. This in-court order was substantially the same order as the court's initial preliminary injunction. Mr. Kreig failed to use the time between the issuance of the preliminary injunction and the hearing to take a single step to comply with the preliminary injunction. At the hearing, no mention was made of his "long-planned trip." It is not unjust to require him to comply with the court's order. He will comply just as the court ordered and within the established time constraints (which were extended at his request to accommodate his professed urgent need to participate in the board election process).

DATED at Anchorage, Alaska this 26<sup>th</sup> day of April, 2007.

*Craig J. Stowers*  
CRAIG STOWERS  
Superior Court Judge

4/24/07  
of the above was *sent* to each of the following  
their addresses of records *Mr. Stewart*

*Mr. Jacobus*

*[Signature]*

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

CHUGACH ELECTRIC,

Plaintiff,

vs.

RAY KREIG, STEPHEN ROUTH  
and CHUGACH CONSUMERS

Defendants


Case No. 3AN-06-13743 CI

~~ORDER GRANTING~~ <sup>Denying</sup> MOTION FOR EXTENSION OF TIME

The motion of defendants, Ray Kreig and Chugach Consumers, for a time extension to Tuesday, May 29, 2007, comply with the production of documents ordered by this Court is

~~GRANTED.~~ <sup>Denied.</sup> The court expects the defendants to comply exactly with the court's previous order.  
DATED this 26 day of April, 2007.

  
Honorable Craig Stowers  
Judge of the Superior Court

4/26/07 9:30am  
The above was applied to each of the following:  
filed  
K. Jacobus / R. Stewart  


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APR 24 2007

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

CHUGACH ELECTRIC,

Plaintiff,

vs.

RAY KREIG, STEPHEN ROUTH  
and CHUGACH CONSUMERS

Defendants

Case No. 3AN-06-13743 CI

REPLY TO OPPOSITION TO MOTION FOR EXTENSION OF TIME  
AND MOTION FOR IMMEDIATE RECONSIDERATION

During the preparation of this reply, and before I could file it, I received the order of this Court dated April 26, 2007. This result is manifestly unjust, and should be reconsidered by this Court. Ray Kreig and his wife have a family farm in Arkansas. They have a long-planned trip scheduled there which conflicts with the order of this Court. They are going to be doing work connected with this farm on that trip. In addition, Mrs. Kreig's parents have a long-planned trip to the farm to see their daughter and son-in-law. They are also traveling there from outside of Arkansas. What is the point in ruining this vacation? Chugach Electric is not harmed if this document production is delayed a short period of time.

Chugach Electric's entire approach in this case is to harass Mr. Kreig and increase his costs to the maximum extent possible. Chugach has unlimited funds - it simply charges the costs back to its rate payers. Mr. Kreig and Chugach Consumers, on the other hand, are under-funded public interest litigants. As pointed out previously to this court (See Exhibit B), public interest litigants have a serious problem because government and other entities either change the rules or make the process so expensive that persons protecting the public interest are frozen out. This approach is directly contrary to the approach recognized by Alaska Rule of Civil Procedure 1, which recognizes the need for the just, speedy and inexpensive determination of every action and

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1 proceeding.

2 Mr. Kreig has already stated that the reason he did not begin immediately to "jump when  
3 Chugach said so" is that there was a conflict with the election. The order of this Court would  
4 have been complied with in the ordinary course of business.

5 A large problem caused when the Court enters an order without providing an opportunity  
6 for a full presentation, including a reply such as here, is that the Court is not fully advised. There  
7 is no opportunity for the Court to be advised as to the misrepresentations in the opposing party's  
8 presentation.

9 The big one here is that Chugach Electric accuses Mr. Kreig of immediately violating the  
10 order of this Court requiring the delivery of the originals of the U.M.S. studies and the Black  
11 book to Chugach as required. It is easy to understand why this Court would be unhappy if Mr.  
12 Kreig violated this order, and would insist on no further delays. However, Mr. Kreig is not in  
13 violation of this order, and any claim that he is in violation is a misrepresentation.

14 This Court required that certain original documents be returned to Chugach Electric, but  
15 that I could retain copies in my files for limited purposes related to the RCA proceedings. We  
16 returned to original of the April 2006 memo to Chugach Electric. It was the original, as could  
17 be determined from the original signature on the document.

18 Chugach Electric already has the originals of the Black Book and U.M.S. studies, so Mr.  
19 Kreig cannot return them. Mr. Kreig had one copy of the Black Book and U.M.S. studies. Until  
20 after the recent hearing, I had no paper copies of these documents, although I did have the disk.  
21 The Black Book is specifically identified as "Copy No. 5." The U.M.S. studies are also copies.  
22 These copies of the Black Book and U.M.S. studies are the only copies of these documents that  
23 are in our possession and they are now secure in my office for limited future use as allowed by  
24 this Court. Mr. Kreig does not have them or copies.

25 Chugach's position, as stated to me, was that it insisted that we return these copies.  
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1 because the copies were originals (notwithstanding the fact that they clearly are not), but that we  
 2 could spend the money to make additional copies of the copies for our limited use. We are  
 3 talking about 9 volumes of U.M.S. studies, generally printed on both sides of the paper. The  
 4 Black Book is almost three inches thick. Copying these copies would be time consuming and  
 5 expensive. This is again nothing more than harassment and an attempt to run up the costs for  
 6 Mr. Kreig in this litigation.

7 Chugach Electric criticizes Mr. Kreig for "acting as my law clerk." Again, Chugach  
 8 Electric has unlimited resources, and simply forces its rate-payers to pay for this litigation. Mr.  
 9 Kreig, a public interest litigant, has limited resources and decided to do this work in lieu of  
 10 paying me to do it. He has the ability to do this work, and it is appropriate for him to do so in  
 11 the interests of saving costs. Chugach's new idea, however, is totally incredible. It suggests that  
 12 Mr. Kreig simply turn the documents over to me, so that I can sort and identify them. It has lots  
 13 of money, Mr. Kreig does not. Mr. Kreig clearly cannot afford this approach. This is totally,  
 14 separate from the fact that I believe that the order of this Court is impossible to comply with,  
 15 even if Mr. Kreig is here, without spending lots of money to hire additional employees. In  
 16 addition, I do not believe that I can devote full time over the next several weeks to what is  
 17 essentially a clerical project. However, I apparently cannot turn the job over to clerical  
 18 employees because that would breach this Court's confidentiality order, which is not yet in  
 19 writing for reference. Again, this is nothing more than harassment and an attempt to increase  
 20 Mr. Kreig's litigation costs

21 Chugach Electric continues to falsely smear Mr. Kreig for alleged improprieties. This  
 22 Court must remember, however, that Chugach was the one that insured that a document would  
 23 not be delivered to my office in a timely fashion so that we could respond by directing that it not  
 24 be delivered until after 4:00. (See Exhibit A) Chugach Electric is the one that has now trapped  
 25 this Court into issuing an order, without allowing for a reply, by misrepresenting that Mr. Krei,  
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has been in blatant violation of court orders, when he has not been.

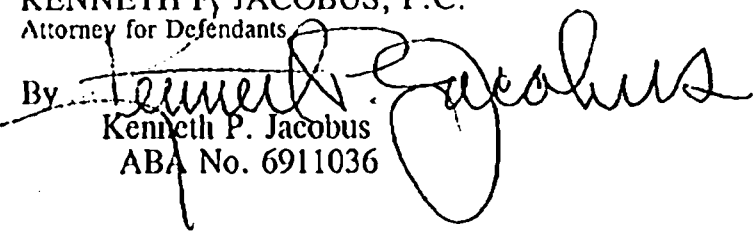
Admittedly, the issue of the trip should have been mentioned at the hearing, but it was not. Chugach accuses Mr. Kreig of keeping the trip secret so that this Court could not rule prior to the time that he left. This is blatantly false, however, because we filed the motion as soon as I became aware of the trip. Mr. Kreig and I are trying to deal in good faith with this Court, and Chugach Electric. We fax and mail pleadings as soon as they are completed, and then immediately file them and provide a chambers copy to this Court. There are no intentional delays, such as "do not deliver until after 4:00 p.m."

The bottom line here is that irreparable harm will occur to the Kreig family if they are not allowed to meet in Arkansas. Mrs. Kreig's parents are not getting any younger. There is no prejudice to Chugach Electric because it has the original documents already, the delay proposed is short, the documents have been in Mr. Kreig's possession for many years, and they will be secure and not used during the period of time prior to production. In fact, the documents have been kept confidential by Mr. Kreig for many years since he has served on the Board of Chugach Electric.

The time extension requested by Mr. Kreig should be granted immediately so that the Kreigs can proceed with their vacation plans.

DATED this 26th day of April, 2007.

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

By:   
Kenneth P. Jacobus  
ABA No. 6911036

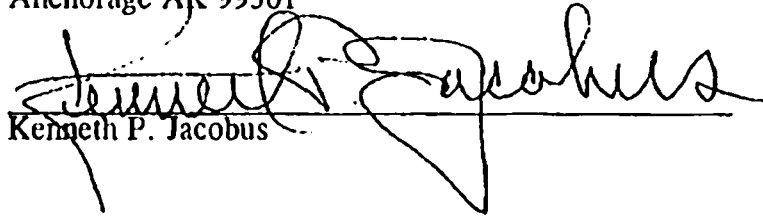
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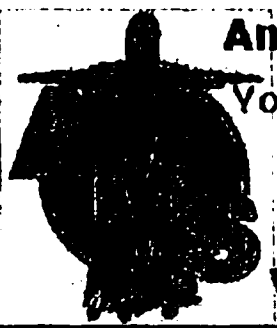
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 26th day of April, 2007, a true and correct copy of this Reply to Opposition to Motion for Extension of Time was faxed and mailed to:

Robert K. Stewart, Jr.  
Davis Wright Tremain  
701 West 8<sup>th</sup> Avenue, Suite 800  
Anchorage AK 99501

  
Kenneth P. Jacobus

**KENNETH P. JACOBUS**  
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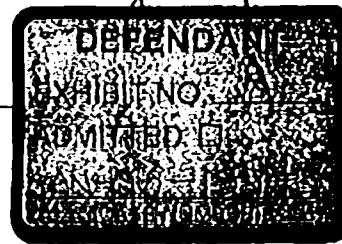
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*Page 1 of 1*





# PUBLIC INFORMATION ACCESS DISCLOSURE ISSUES

prepared by Ray Kreig, April 15, 2006 (revised April 16, 2006)

Sunshine Bargaining

## Citizen lobbying frustrated by withheld key information

Public entities frequently act to frustrate and discourage citizen lobbying and attempts to hold officials accountable by withholding key information or making it available only after protracted delays or procedures. A special interest has all the time and resources in the world to gather what it needs to dominate a particular legislative, regulatory, or public hearing process. An ordinary citizen or grassroots group trying to affect the policy normally does not have paid staff, expertise or inside advance information on the timing of key decision points. This makes it very important that key information be publicly available with little effort on the part of the user to obtain it in time to affect the process or make informed comment.

Boise State University professor of economics Charlotte A. Twight describes the mechanisms used by government officials to deliberately manipulate "political transaction costs" and increase the effort for private citizens trying to understand a proposed measure and take political action to resist or support it. She feels that transaction-cost-increasing strategies have served to reduce or deflect resistance to the growth of government.

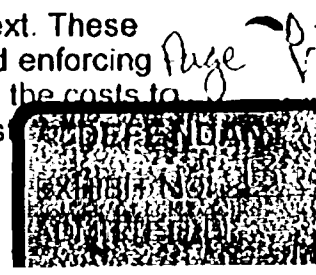
### POLITICAL TRANSACTION COSTS: WHAT THEY ARE, WHY THEY MATTER

Twight, C., 2002, *Dependent on D.C. : the rise of federal control over the lives of ordinary Americans*: New York, Palgrave for St. Martin's Press, p. 19-20.

**Political transaction-cost manipulation, although seemingly abstract, involves behavior as real as the government's latest attempts to lie, misrepresent, hide its activities, conceal its costs, or otherwise change the constraints so that people have less incentive and ability to resist government-expanding measures. It is at the heart of the transformation of America from a nation embracing clear constitutional limits on federal authority to a nation of fluid governmental powers and ubiquitous public dependence.**

**Transaction costs** are costs that arise when people are involved in some kind of exchange, or "transaction." Suppose you want to plant a tree behind your house. If you take a slip off one of your other trees and do the planting all by yourself, you do not incur any transaction costs. If you hire a landscaping company to plant the tree, some costs, such as the cost of digging the hole and filling it in, still are not transaction costs, because they are costs that also exist when you plant the tree by yourself. But other costs are transaction costs, such as the costs of getting information about the landscaping company, negotiating a price, making sure the workers do their work competently, and so forth-costs that would not exist at all if you planted the tree by yourself.

Transaction costs also exist when people act collectively in a political context. These political transaction costs determine the costs to individuals of reaching and enforcing political agreements regarding the role and scope of government. They are the costs to each of us of perceiving, and of acting upon our assessment of, the net cost of particular governmental actions and authority.



PUBLIC INFORMATION ACCESS DISCLOSURE ISSUES

**All our costs of learning the likely consequences of proposed government programs and of taking political action in response to such proposals are political transaction costs. Some of these costs are "natural," meaning that they cannot be avoided. But other political transaction costs are "contrived," deliberately created by government officials so as to increase our costs of assessing and responding to government policies. While not disputing the idea that government sometimes reduces certain economic and political transaction costs, this chapter investigates the diverse methods by which government actors routinely raise the transaction costs of political resistance. The contrived political transaction costs so created are pivotal to this book's analysis of the growth of government.**

The Freeman: Ideas on Liberty - May 2002 - Vol. 52 No. 5

**Designing Dependence** by Charlotte A. Twight <http://www.fee.org/publications/the-freeman/article.asp?aid=4106>

How has the federal government been able to so greatly expand its powers, sometimes in ways initially contravening public sentiment, without provoking rebellion? My answer, developed at length in subsequent chapters, is that government officials have both the power and the personal incentives to change the costs to private citizens (and to others in government) of taking particular political actions. Through statutory law and otherwise, **they change the rules of the game in diverse ways that alter the costs of resisting particular political measures.** In the language of economics, government officials change the transaction costs to individuals of taking political action on measures that influence the scope of government authority. **They do so through familiar political behavior such as lying and misrepresentation—which raise the costs of obtaining accurate information—and also by changing in other ways the costs to private individuals of achieving and enforcing political agreement on matters that determine the scope of government authority.** I provide many examples of this behavior in subsequent chapters. For government officials, the trick is to selectively curtail political resistance. In each of the policy areas examined in this book, **deliberate government manipulation of political transaction costs will be shown to have achieved exactly that result. Government officials shaped political outcomes to their own liking in these cases by deliberately increasing the costs to private citizens of resistance.** Once established, the new institutions refashioned the status quo into one characterized by greater government authority over people's lives. In turn, such institutional change facilitated widespread ideological change that buttressed and reinforced the new powers of government.

GREGG ERICKSON -- Access to information changes debate -- April 23, 2006 - Anchorage Daily News

Instant accessibility to information hasn't just made it easier to educate legislators. **Putting information at everyone's fingertips -- not just Alaska information, but information from other jurisdictions -- has made it harder to ignore inconvenient facts. Constituents have a better chance to know what's going on and weigh in.** Stories told in one committee get screened more frequently against what was said earlier. And what an oil company witness is telling Alaskans can be Googled and compared with what the same company told officials in some country halfway around the world. **This has imposed a new kind of intellectual discipline, and improved the credibility of the information flowing to legislators.**

Ex. B Page 2 of 2

1 Robert K. Stewart, Jr.  
2 Karmyn A. Olmstead  
3 Davis Wright Tremaine LLP  
4 701 W. 8th Avenue, Suite 800  
5 Anchorage, Alaska 99501  
6 (907) 257-5300, telephone  
7 (907) 257-5399, facsimile

*Ken has seen this kind  
of stuff only twice  
in his career*

8 Attorneys for Plaintiff  
9 Chugach Electric Association, Inc.

10 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

11 THIRD JUDICIAL DISTRICT AT ANCHORAGE

12 CHUGACH ELECTRIC )  
13 ASSOCIATION, INC., )  
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15 Plaintiff, )  
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17 vs. )  
18 )  
19 RAY KREIG, STEPHEN ROUTH )  
20 and CHUGACH CONSUMERS, )  
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22 Defendants. )  
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Case No. 3AN-06-13743 Civil

OPPOSITION TO MOTION FOR EXTENSION OF TIME

Plaintiff Chugach Electric Association, Inc. opposes defendants Ray Kreig ("Kreig") and Chugach Consumers' Motion for Extension of Time for the reasons set forth below.

Ray and Lee Ann Kreig were present in the courtroom last Friday, April 20, 2007, when the Court, Mr. Jacobus and I had a discussion concerning the deadlines by which Kreig and Chugach Consumers would be required to comply with their obligations to identify and return documents pursuant to the preliminary injunction order entered orally

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Suite 800 - 701 West 8th Avenue  
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1 on that date. There is simply no excuse whatsoever for Kreig not having brought his  
 2 travel schedule to our collective attention as those matters were being discussed. The  
 3 only possible explanation is that he anticipated forcing a unilateral change in the schedule  
 4 by making this motion with insufficient time for the Court to rule on it before he left  
 5 town.

6 Kreig has never offered any explanation why he failed to identify, organize and  
 7 make available to Chugach all of the Confidential Chugach Documents as required with  
 8 the filing of his Initial Disclosures which were due on February 26, 2007. Kreig has  
 9 never offered any explanation why he failed to take any steps whatsoever to comply with  
 10 the Preliminary Injunction after it was issued on April 6, 2007. Kreig failed to deliver the  
 11 originals, as opposed to copies, of the Black Book and the UMS Studies by the close of  
 12 business on Friday, April 20, 2007, as he was ordered to do by the Court. See Exhibit 1.  
 13 And now, once again, Kreig comes to the Court asking for more time without making any  
 14 showing whatsoever that he has taken any good faith actions to comply with the Court's  
 15 oral order issued last Friday that 1) he immediately identify all Confidential Chugach  
 16 Documents which are clearly marked as confidential or privileged and return them to  
 17 Chugach on or before Friday, May 4, 2006, and 2) create a list of all documents which  
 18 are not clearly marked but which may be confidential or privileged and deliver that list to  
 19 Chugach by the same deadline.<sup>1</sup>

24 <sup>1</sup> Based upon the Affidavit #2 of Ray Kreig filed with the Reply to Opposition to Motion to Vacate Preliminary  
 25 Injunction, it appears Kreig elected to spend his time since last Friday acting as Mr. Jacobus' law clerk rather than  
 making efforts to comply with the Court's order. He should bear the consequences of that choice,

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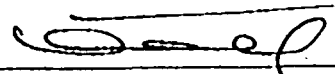
There is no excuse for Kreig's cavalier disregard for this Court's orders.

Rewarding his conduct will only foster further acts of contempt. The Court's initial order should stand. There is no reason why Kreig cannot make his files available to his attorney and have him identify and return to Chugach all documents which are clearly marked as confidential or privileged and prepare at least a draft of the required list.

Kreig should also be sanctioned for wasting the Court's and counsel's time with this matter which could have been addressed in the ordinary course last Friday. Chugach proposes that a fair estimate of that cost is in the amount of \$500.00.

Dated this 25<sup>th</sup> day of April, 2007.

Davis Wright Tremaine LLP  
Attorneys for Plaintiff  
Chugach Electric Association, Inc.

By:   
Robert K. Stewart, Jr.  
Alaska Bar No. 8506082

Certificate of Service

I hereby certify that a true copy of the above was faxed and hand delivered on the 25<sup>th</sup> day of April, 2007, to:

Kenneth P. Jacobus  
Law Offices of Kenneth P. Jacobus  
310 K Street, Suite 200  
Anchorage, Alaska 99501

  
Kris Hamann

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Attorneys for Plaintiff  
Chugach Electric Association, Inc.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CHUGACH ELECTRIC )  
ASSOCIATION, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
RAY KREIG, STEPHEN ROUTH )  
and CHUGACH CONSUMERS, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. 3AN-06-13743 Civil

ORDER GRANTING MOTION FOR EXPEDITED CONSIDERATION

THIS MATTER having come on before the above-entitled Court on plaintiff Chugach Electric Association, Inc.'s ("Chugach") motion for expedited consideration of defendants' Motion for Extension of Time, the Court having reviewed the pleadings pertinent thereto, the files and records contained herein, and being otherwise fully apprised in the premises; NOW, WHEREFORE

IT IS HEREBY ORDERED that Chugach's Motion for Expedited Consideration of defendants' Motion for Extension of Time is granted and defendants shall file their

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reply brief, if any, on or before the close of business on Wednesday, April 25, 2007.

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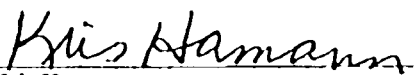
DONE this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
The Honorable Craig F. Stowers  
Superior Court Judge

Certificate of Service

I hereby certify that a true copy  
of the above was hand delivered on the  
25<sup>th</sup> day of April, 2007, to:

Kenneth P. Jacobus  
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April 23, 2007

Mr. Kenneth P. Jacobus  
Law Offices of Kenneth P. Jacobus, P.C.  
425 G Street, Suite 920  
Anchorage, Alaska 99501-2140

Re: Chugach Electric Association, Inc. v. Ray Kreig, et al., Case No. 3AN-06-13743

Dear Ken:

I am in receipt of your letter dated April 20, 2007, together with the enclosed CD-R. It was my clear understanding of Judge Stower's order that defendants were to return the originals of the Black Book, the April 2006 memo and the UMS Studies and that you would be allowed to retain copies of those documents on an interim basis for the sole purpose of responding to the Motion for Return of Documents Filed Under Seal and to Strike Confidential Complaint filed with the Regulatory Commission of Alaska in U-06-135.

Accordingly, please make immediate arrangements to deliver the originals of the Black Book and the UMS Studies to my office. In exchange, we will give you back the CD-R which you delivered last Friday.

Very truly yours,

Davis Wright Tremaine LLP

Robert K. Stewart, Jr.

RKS/rks  
cc: Carol Johnson  
23681/83/119834.1 (jacobus 4 letter)