

Report of the BPU Special Master
February 5, 2009

Overview:

The Special Master was put in place on November 10, 2008 to evaluate the policies, practices and procedures in relationship to BPU contract approval, management oversight, hiring and safeguards that promote the financial integrity of the Utility including:

- BPU use of alliances, standing purchase orders, and blanket orders as purchasing tools to significant expenditures without the use of annual competitive bidding
- BPU use of contracts that were not solicited through a competitive bid process and contracts that were post dated
- BPU tree trimming policy and the assurance that the work is completed at a competitive cost
- BPU use of cost benefit studies before entering into a contract
- The role of the Ethics Committee
- Employee expense report policy
- BPU personnel policies as they relate to employee recognition and other issues

The Special Master was charged to perform the duties under the scope of services with complete independence and without direction, control or oversight by the Board of Public Utilities, the General Manager of the Board of Public Utilities, the County Administrator or the Unified Board of County Commissioners. The Special Master was to make all determinations of fact and recommendation solely based on his review. The Special Master was allowed and did coordinate work with the Legislative Auditor so as to avoid duplication of that ongoing review. The Special Master was also allowed and did use, at his discretion, prior reports and studies and consult with any third-party external service providers retained by the Unified Government or the BPU to receive information in their possession.

During the course of the review, the BPU Board and Staff were fully cooperative with the Special Master. They were very supportive of the Special Master review process that had been established, open and candid in various one-on-one and group meetings that were held, and timely in providing data to the Special Master.

As benchmarking data was developed by the Special Master and recommendations were presented to the BPU, the organization did engage in healthy, positive dialog on the benchmarking data, how the BPU could modify its practices to meet the “norms” as established by peer utilities and other standards, what the roadblocks to change would be and how the BPU could overcome the issues created by change. The Special Master recommendations have been adopted or are in the process of being adopted by the BPU.

The report that follows is laid out into the various areas that the Special Master reviewed. These areas include:

- Purchasing Practices
- Tree Trimming and Vegetation Management
- Employee Expense Report Policy

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- Internal Controls
- Ethics Committee
- Employee Wages, Benefits and Recognition
- Special Master Call Line Messages

Purchasing Practices

The BPU had a Purchasing Policy in place when the Special Master began his work and was in the process of updating the policy in specific areas such as the Procurement of Professional Services. In order to ensure that the BPU was using best purchasing practices, the Special Master performed a benchmarking study of BPU practices as compared to the American Bar Association Model Procurement Code for State and Local Governments as well as peer public power utility companies.

The base point for the purchasing policy benchmarking was the 2000 American Bar Association (ABA) Model Procurement Code. The Code offers states and local jurisdictions a basic formulation of the fundamental principles upon which durable procurement systems rest. Since 1979, these principles have well served the public officials who manage state and local procurement systems and the thousands of private sector suppliers. The 2000 update to the Code did not result in any major changes to these basic principles. Indeed, these principles have become bedrock notions in American law associated with public procurement. Coverage of these basic principles was preserved in the revised Code:

1. Competition
2. Ethics
3. Predictability (stability, advanced publication, accountability)
4. Clear Statements of Procurement Needs
5. Equal Treatment of Bidders/Offerors
6. Methods of Source Selection
7. Bid / Proposal Evaluation
8. Reduction in Transaction Costs for Public and Private Sector Entities
9. Procurement of Construction Related Services
10. Remedies
11. Facilitation of Intergovernmental Transactions (Cooperative Procurements)

The Model Procurement Code covers various aspects of procurement including: Competitive Sealed Bidding; Competitive Sealed Proposals; Small Purchases; Sole Source Procurement; Emergency Procurements; Special Procurements; and Architectural and Engineering Services as well as Multi-Year Contracts. Attachment A provides a brief recap of these items from the Code.

With the ABA Code as background, the Special Master began to research other public utilities to understand their purchasing policies. All of the utilities contacted were a member of the American Public Power Association. They included Springfield, Missouri City Utilities which is often used in comparisons with the BPU as well as Colorado

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Springs, Colorado; Omaha, Nebraska; Riverside, California; and Springfield, Illinois. The Unified Government of Wyandotte County/Kansas City, Kansas also provided their purchasing policy.

Using the written data provided by the various utilities as well as direct conversations with utility Purchasing personnel, a comparative matrix of purchasing policies was developed for benchmarking purposes.

The annual revenue of the utilities used in the benchmarking is displayed below as well as the Unified Government’s budget. You will note that both Springfield, Illinois and Missouri have revenues less than the BPU’s and the other three utilities are larger than the BPU. It was the Special Master’s opinion that the selected utilities represented a good benchmark for the BPU comparison.

	BPU	Colorado	Omaha	Riverside	Springfield	Springfield	Unified
	2008	Springs	Public	CA	IL	MO	Government-
	Budget	2007 Act.	2007 Act.	2007 Actual	FY End 2/08	2007	WyCo/KCK
	\$ Mils.	\$ Mils.	\$ Mils.	\$ Mils.	\$ Mils.	\$ Mils.	
Financial Recap:							
Revenue	257.2 ©	\$459.5 (C)	750.3 (D)	\$371.8 ©	\$205.8 ©	\$247.3 (C)	\$259.1
Total Assets (B)	\$797.3	\$2,959.7	\$4,052.4	\$1,135.0	\$1,156.9 (A)	\$1,719.0	
(A) Assets include Construction-Work-In-Progress of \$439.3 million							
(B) Total Assets may include electrical, water, natural gas and other related assets							
© Electric and Water Revenue only							
(D) Electric only utility							

The Special Master then compiled a recap of the various purchasing policies and the thresholds used for various dollar amounts of acquisitions. The result of the benchmarking analysis was that the BPU, generally, was within the established “norms” of other utilities.

The BPU’s informal bid process/no bid required for items under \$5,000 is consistent with most other utilities used in the comparison. It, for example, matches directly with that of Omaha Public Power.

Springfield, Illinois has the most restrictive practices, requiring a written quote from at least three vendors for items ranging in value from \$250 to \$5,000. The Special Master in phone conversation specifically questioned whether this was the actual practice or not. The Springfield response was, “Yes.” The Special Master provided a hypothetical example of a \$400 replacement motor to be used in a repair and if a written quote was required from three vendors. The Springfield answer was yes and the quotes could be in the form of a fax. Verbal, phone quotes were not acceptable.

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It is the Special Master's opinion that the Springfield, Illinois policy in this area is too restrictive. It is not in the spirit of the ABA Model Procurement Code which states the goals include reduction of transaction costs for governmental entities at local levels. The Code commentary on small purchases recognizes that certain public purchases do not justify the administrative time and expense necessary for the conduct of competitive sealed bidding.

Based on the data, the Special Master was satisfied with the BPU's procurement process on items of less than \$5,000.

In analyzing the threshold for formal bids, the BPU policy was written quotes for items greater than \$5,000 from at least three vendors and sealed bids for items greater than \$50,000. The BPU written quote policy is consistent within the range of what other utilities do. On sealed bids, for example, the Omaha's threshold is \$100,000, Colorado Springs is moving from \$50,000 to \$100,000 and both the BPU and Riverside, California are at \$50,000. Springfield, Illinois, consistent with the previous discussion on small purchases, is the most restrictive with a threshold of \$15,000 on sealed bids and Springfield, Missouri has a threshold of \$25,000.

Based on the data, the Special Master was satisfied with the BPU's procurement process for items of greater than \$5,000.

In the Special Master's benchmarking activity, two areas were determined to be out of line with the ABA Code Guidelines and the practices of other public utilities. These two areas were contract length and advertising for professional services.

1.) Multi-Year Contracts: The ABA Code commentary from Section 3-503 includes that multi-year contracts are a common method of procurement, and that contract durations need not be tied exclusively to fiscal years. The Code permits multi-year procurements in order to enable an entity to procure larger quantities and obtain the benefits of volume discounts. A multi-year contract should be used only for supplies or services needed on a continuing basis with annual requirements that can be reasonably estimated in advance. Multi-year procurements should attract more competitors to submit bids or offers for the larger contract awards and thereby provide the jurisdiction with the benefits of increased competition.

The Special Master's benchmarking activity determined that other utilities used multi-year contracts with various term lengths. These contract lengths may be set in various formats such as a three-year contract with the possibility of two one-year extensions or a one-year contract with the possibility of four one-year extensions. All of the utilities used in the benchmarking analysis require a rebid process at the end of five years.

The local BPU practice has been to continue to extend contracts based on the qualifying criteria that the vendor was providing good service and at a cost that the BPU believed was competitive. Based on the review of the benchmarking data with the BPU Staff, the

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BPU Purchasing Policy will be modified to require all contracts to be rebid at the end of five-years.

In conjunction with the above change, the Special Master recommends that the BPU lay out an aggressive timetable to rebid all contracts beginning with those contracts that have been extended beyond three years. A possible scenario would be to rebid all contracts that have been in place more than five years in 2009 and all contracts that have been in place more than three years in 2010. The priority would be to start with the contracts with the greatest longevity first and work back to the point where all contracts have been rebid and are within the new procurement policy guidelines.

2.) *Advertising for Professional Services*: Professional Services are provided by an individual or a firm contractually hired because of expertise in a given field which is generally intellectual in nature. Such services may include, but are not limited to, architects, accountants, attorneys, engineers, analysts, land surveying services and real estate appraisers.

The ABA Code Methods of Source Selection specifically addresses Public Notice under Competitive Sealed Bidding (Section 3-202) and Competitive Sealed Proposals (Section 3-203) which are the methods generally used to procure Professional Services.

The Code commentary under Sealed Bidding says the public notice should be given sufficiently in advance of bid opening to permit potential bidders to prepare and submit their bids in a timely manner. Because the adequacy of notice will, as a practical matter, vary from locality to locality and procurement to procurement, no attempt is made in the Code to define statutorily either a prescribed method of notice or the duration of its publication.

In Code Section 3-203 -- Competitive Sealed Proposals – Subsection 3 states, “Adequate public notice of the Request for Proposals shall be given in the same manner as provided in Section 3-202(3) (Competitive Sealed Bidding, Public Notice).”

The Code, in Section 3-402, does allow for the prequalification of prospective suppliers for particular types of supplies, services and construction. This section of the Code would allow the BPU to be assured that the prospective vendors were capable of delivering the required services.

The local BPU practice has been to not advertise for Professional Services. The Special Master did meet with the BPU Staff on this issue, shared the ABA Model Code as well as the policies from other benchmarked utilities, and good discussion took place on the issue. The outcome of the discussion was that the BPU Purchasing Policy will be modified to allow for the advertisement of Professional Service Contracts within the spirit of the ABA Code.

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As noted in the opening paragraph of this section, the BPU was in the process of updating its Professional Services Procurement Procedure when the Special Master began work. The BPU General Manager's intent was to have the new policy reviewed with the Board of Directors and in place on January 1, 2009. This time table was delayed so that the BPU could ensure that the recommendations of both the Special Master and Legislative Auditor were incorporated into the new policy. Their public reports were not available until January; therefore, the new policy was not in place on January 1.

In addition to the above mentioned items, the Special Master did provide other data to the BPU as reference material pertaining to procurement policies from other entities. This data included how to address such areas as Local Preference, Minority Business Enterprises, Women Business Enterprises, and Affirmative Action.

At the same time the Special Master was reviewing purchasing policies, the Legislative Auditor was performing an audit of various procurement activities for the period January through September 2008. The Special Master and Legislative Auditor did discuss the various aspects of the procurement process and did agree that the above work of the Special Master was appropriate and did not overlap the work of the Legislative Auditor.

Tree Trimming and Vegetation Management

The BPU does have Operations Policies and Procedures in place for transmission system vegetation management. The policies were updated in 2008 per various generally accepted industry standards and a defined vegetation management maintenance cycle for transmission systems is defined and in place. The initial maintenance cycle under this plan was begun in 2006.

Background

The BPU Vegetation Management Policy has been developed to ensure the proper protection, operation, stability, and reliability of its electric transmission systems to minimize the potential for damage to adjacent properties or structures caused by contact with trees and other vegetation, and to provide for the safety and well-being of the general public. The policy is also in response to the requirements promulgated by the North American Energy Regulatory Corporation (NERC) and the Southwest Power Pool (SPP) for power lines operating at 100kV and above, and part as an integrated overall BPU operations policy. The policy is intended to:

- Improve the overall reliability of the BPU electric transmission systems by eliminating transmission outages caused by power line contacts with vegetation located in transmission rights-of-way (ROW) or adjacent to ROW
- Maintain safe clearances between transmission lines and vegetation on and along transmission rights-of-way
- Establish a formal system for reporting vegetation-related outages of its 161 kV transmission systems to the Southwest Power Pool and to the North American Energy Regulatory Corporation

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NERC and SPP have promulgated standards requiring that member utilities record and report on Vegetation Management plans in some detail, and that they submit formal responses to periodic audits for vegetation contact-caused 161 kV operational issues.

BPU is obligated to file annual reports with the SPP to satisfy various requirements and quarterly reports on vegetation-contact caused trips on its transmission systems.

In addition to NERC and SPP, the Federal Energy Regulatory Commission (FERC) also has vegetation management guidelines that utilities must follow. The FERC Vegetation Management Reporting Order applies to:

- Tie-line interconnection facilities between control areas or balancing authority areas (regardless of voltage rating)
- “Critical” lines as previously designated by a regional reliability council
- Lines that are operated at 100 kV or above

BPU’s Specific Compliance Actions

In 2006, the BPU laid out a six-year plan to ensure that its vegetation management plan was compliant with the NERC, FERC and SPP guidelines. The six-year plan was broken down into an initial aggressive “catch-up” strategy followed by perpetual annual attention to continued migration and rights-of-way maintenance. The plan called for approximately twenty percent of the 161 kV System mileage to receive species-specific ROW clearing and/or grubbing down to ground level and follow-up treatment maintenance. In addition, “patrol and spot-spray” of previous year’s mileages would occur.

After the first six years, maintenance of the 161 kV transmission systems using fully outfitted crews would occur in the spring and/or fall months to ensure compliance with NERC, FERC and SPP guidelines as well as maintaining system reliability and public safety standards. Through the first three years of this plan, all trim trimming is current with the plan.

BPU’s Vegetation Management Contract

Asplundh Tree Experts has been the BPU’s service provider for electrical line clearance and grounds maintenance work since calendar year 2000. The contract was awarded to Asplundh after receiving responses to a Request for Proposals.

Asplundh is the largest tree trimming contractor in the United States. Their size gives them extensive electrical system experience and unmatched resources available for storm restoration. In many instances, additional crews could be made available within a 24-hour notice for storm related restoration services. Asplundh is also an industry leader in industrial safety and reliability.

With their industry knowledge, Asplundh has played an integral role in helping the BPU establish and administer its new NERC/FERC/SPP transmission line clearance policies. They also provide grounds maintenance work at BPU sites including lawn mowing, spraying, and maintaining vacant BPU properties.

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The BPU reviewed the existing Asplundh contract in April 2008, and it was the Electrical Operation Manager's recommendation to extend the current contract for two additional years. The recommendation further stated that a Request for Proposals (RFP) be extended to qualified vendors in 2010, to go into effect the following year, and on each four-year interval thereafter to allow competitive bidding and maintain credible purchasing standards. The senior management team accepted the above recommendation and the contract was extended.

Special Master Recommendations:

The Special Master was encouraged that the BPU had recognized the length of the Asplundh contract in 2008 and had made proactive plans to competitively rebid the contract. The rebid is in line with the Special Master's recommendations around the BPU's Purchasing Policy and contract length. With the number of other contract rebidding that has been recommended for 2009, it may be appropriate to hold off on this contract rebidding until 2010 since the current contract extension was reviewed in 2008.

Employee Expense Report Policy

The Special Master reviewed a number of items regarding Employee Expense Reports:

BPU Internal Audit Report:

The Special Master was provided the BPU Internal Audit Report on Procurement Card and Expense Reports filed for the years 2005 – 2006. The Internal Auditor chose a sample of approximately twelve department heads and division managers. The Internal Audit found two employees with exceptions to the stated policy, and those employees and their exceptions were addressed by Mr. Gray.

The *Conclusions* section of the BPU Internal Audit Report included in part:
“With noted exceptions, BPU Management, for the most part, complied with travel policies and procurement card procedures intended to govern the use of BPU funds for valid utility expenses in our sample time period. The current General Manager, Don Gray, has taken steps to tighten controls even further.”

The *Recommendations* section of the BPU Internal Audit Report included:

1. The audit noticing that several people didn't know how to properly fill out an expense report. In some instances, that led to some overcharges to the BPU. The Audit recommended that management provide employee instruction on how to properly complete an expense report and that excess reimbursements should be paid back to the BPU. The Special Master found that 141 employees took Procurement Card Training in April 2007 and that 54 employees took Expense Report Training in November 2007. This represents timely closure to the Auditor's recommendation since the November training included transition to a new expense reporting system. In reviewing the training records, the Special Master was concerned that:

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- a. more than 54 employees probably file expense reports and, therefore, more employees should have had the training and
- b. the names of managers such as Don Gray, William Johnson and Jim Epp did not show as completing the Expense Report Training. It is the Special Master's opinion that the senior managers should have completed the training so that they would know the exact criteria the employees were being held to as they approved the employees' expense reports as well as filing their own expense reports.

In discussion with the General Manager, he believed that everyone attended the training, but the names of all of those present were not captured. The General Manager committed to work with the organization to ensure that the Utility does a more accurate job of recording mandatory training class data in the future to ensure that the records are accurate and reflective of the actual attendance.

In line with the Auditor's recommendation, BPU Management did recover \$874.53 in excess expense reports reimbursements by May 23, 2007 and the issue is now considered closed.

2. The Auditor recommended that the Board approve the Procurement Card Manual as official Board Policy. This was done at the March 21, 2007 Board meeting and is Interdepartmental Practice No. 03-400-003 – Procurement Card Procedures.

KPMG Discussion:

Travel and Entertainment Expense was specifically discussed by the Special Master at a meeting with KPMG, the BPU's public accounting firm and independent, outside auditor, on November 24. One hundred percent of the Board and Senior Management expense reports are reviewed by KPMG. They have no concerns on improper use in any of the reviews that have taken place in the past two years.

Special Master Conclusions:

The BPU has worked to dramatically improve its Procurement and Expense Report Policy in the past two years. The 2007 BPU Internal Audit report indentified weaknesses in the policy and review process that the current management team corrected as noted above. The tone of the meetings that the Special Master had with the BPU General Manager reinforce the serious view that he takes on frugally spending the utility's money on business travel and entertainment expense. The KPMG audit of expense reports for the past two years affirms that the utility has put the corrective action in place. Therefore, the BPU needs to continue to follow the current operating practices.

Internal Controls

The Internal Control Department had been eliminated and competitive bids for a third party to perform internal control functions were being received when the Special Master was appointed.

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Background:

The consulting firm of Alvarez & Marsal (A & M) had been hired by the BPU to review operations and formulate recommendations to help the BPU improve efficiencies. Their Phase 1 Report spanned work that they performed at the BPU from June 2007 through March 2008 and it provided recommendations on internal control.

Alvarez and Marsal's report included the following:

“Internal Auditing is defined as:

‘An independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.’

Source: *Standards for Internal Control in the Federal Government*, November 1999, ‘Green Book.’

A & M supports the concept that the role of the Internal Audit is to:

- Evaluate the adequacy of the system of internal controls
- Verify the existence of assets and proper safeguards
- Make recommendations to management based on evaluation and testing
- Identify opportunities to improve efficiency
- Be an available resource to management – consult on internal control matters
- Assist management in achieving financial and operational goals

As noted above, a main component of the internal control function is the assessment of internal controls. The three objectives of internal controls are:

- Effectiveness and efficiency of operations
- Reliability of financial reporting
- Compliance with applicable laws and regulations”

Alvarez and Marsal recommended the following program and scope changes to the BPU's Internal Audit function:

1. The Internal Audit reports should be defined in an annual work plan established by the Board's Audit Committee and General Manager.
2. The work plan should be based on an annual risk assessment of the Utility's internal control environment.
3. The audit reports should include Management's responses to the audit finding including an action plan to address the risk assessments. Weakness in internal controls should be communicated in a timely fashion to those responsible (including Management and the Board) such that corrective action can be taken.

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4. Improved accountability in ensuring that the audit report finding and management responses are completed.

Alvarez and Marsal also recommended the BPU consider expanding its internal audit approach to include a more formalized process with the final report to include follow-up and reporting.

Third Party Bid Process:

With the above as background, Alvarez and Marsal assisted the BPU in putting together a Request for Proposal (RFP) and Qualifications for Professional Services to provide Internal Audit Services. Four public accounting firms in the Kansas City area received the RFP with a submission deadline of November 11, 2008.

Two firms did bid on the proposal – Grant Thornton and RSM McGladrey – and those firms made formal presentations in support of their bid to members of the BPU Senior Management Team, Board Audit Committee and two BPU consultants on December 8, 2008. One of the two firms had a greater depth of knowledge and experience in performing third party internal control services for municipal utility and related entities and that firm was chosen to become the BPU's Internal Audit Services provider beginning in 2009.

Special Master Conclusions:

The Special Master actively participated in the selection process and is supportive of the outcome. The Special Master reviewed the Alvarez and Marsal study on internal controls, the Request for Proposal that was published, and the written bids that were received back from Grant Thornton and RSM McGladrey. The two proposals were discussed in several meetings with the BPU CFO prior to the December 8 formal presentation by the bidders and specific questions for the meeting were prepared. Those questions were also shared with the General Manager several days prior to the meeting.

The third party Internal Audit Services will offer the following benefits to the BPU:

- A formalized Risk Assessment of the BPU's operations by a qualified and experienced independent party
- A formalized process for the Senior Management Team and Board Audit Committee to review risk and set priorities
- Tailored work plans and audit tools and programs to address risk using Institute of Internal Auditors and other accepted best practice standards
- A defined reporting mechanism to ensure Senior Management and the Board are aware of issues and how they will be corrected with owners assigned and a corrective action time line in place

The Special Master endorses the above changes to the Internal Control process.

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Ethics Committee

Background:

The BPU Ethics Program was created in 2003 as part of the BPU's ongoing commitment to the citizens of the BPU's service area. The program's mission statement is as follows:

“The Kansas City Board of Public Utilities Ethics Program promotes public trust through a politically independent, unaffiliated, and nonpartisan Ethic Commission and Ethics Administrator. The Ethics Program provides training, investigations, advising, and community outreach to the elected officials, officials, employees, and citizens of the BPU and its service area.”

The Ethics Program consists of four main components:

1. An Ethics Policy for all elected officials, officials, and employees of the BPU;
2. A five-member Ethics Commission;
3. An Office of the Ethics Administrator; and
4. An ethics training regimen and an investigatory process that promotes both compliance with the Ethics Policy and a redress for complaints and violations

The Ethics Commission is responsible for implementing the Ethics Policy, advising the BPU Board of Directors and staff on ethical issues, and ensuring compliance with Ethics Policy provisions through regular review of operational activities. The Ethics Commission meets once a month in open session. The Ethics Administrator serves as executive agent for the Ethics Commission and is responsible for all training, complaint investigations, general inquiries, and day-to-day operations of the Program. All elected officials, officials and employees of the BPU are required to attend a basic ethics education training session within 90 days of their affiliation, and to further attend a continuing ethics education training session every three years thereafter.

In discussion with the Ethics Commission Chair, Michael Price, he stated that the actual meeting practice was not necessarily monthly. The Ethics Commission was convened on an “as required” basis. The Ethics Administrator would notify the Commission Chair when he had an issue to come before the Commission, and the Chair would call the meeting.

The Ethics Policy was approved by the Board on November 19, 2003 and went into effect on January 1, 2004. A review of the BPU Ethics Policy showed that it generally paralleled the policy of the Unified Government of Wyandotte County and both policies incorporate ethics recommendations as contained in the American Bar Association guidelines for procurement.

BPU training records show that 620 employees received the initial Ethics Program training in 2004. The policy also requires continuing ethics training at least once every three years after attending the introductory training, and BPU records show that 581 employees were retrained in 2007. The Ethics Commission did regularly review the Ethics refresher training that was conducted in 2007 and their meeting minutes show that the Commission was satisfied with the training module and employee completion rate.

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Current Status and Special Master Concerns:

The Ethics Administrator and Ethics Commission were not functioning entities at the BPU when the Special Master arrived in November 2008.

The Ethics Administrator, Dr. George Frederickson, resigned effective February 15, 2008 and the BPU did advertise for a replacement. A replacement candidate was chosen and indicated that he would be accepting the position. The candidate worked with the law firm of Stinson Morrison and Hecker reviewing the BPU's Ethic Policy after indicating that he would accept the position. During this period of time, the replacement candidate never signed a contract to officially come on board as the Ethics Administrator. During the summer, the candidate decided not to take the position due to a change in professional and personal life. However, the letter to decline the offer was not received by the Board President until the October/November 2008 time frame. Therefore, the Ethics Administrator position has been vacant since February 2008.

The BPU was trying to fill the Ethics Administrator position when the Special Master began his work. Several candidates that had done ethics administration work in the community had been contacted, but they had turned the BPU down. The Special Master, BPU and Unified Government did share thoughts on available and qualified Ethics Administrators in December. The Unified Government did provide the BPU the names of three qualified candidates that had previously bid to become the UG's Ethics Administrator in January 2008.

The BPU's acting Chief Administrative Officer contacted one of the three, Mr. Michael Manske who had previously served as the Assistant Ethics Administrator under Dr. Frederickson, to see if he had any interest in the BPU Ethics Administrator position. A meeting was held with Mr. Manske on December 22 and he presented his qualifications for the position which included his extensive previous work with the BPU Ethics Commission. Mr. Manske expressed his interest in the position. As of January 31, 2009, the BPU was working to hire Mr. Manske and hopes to have him in place as a functioning Ethics Administrator in the very near future.

The BPU Ethics Policy states that the five-member Ethics Commission is responsible for conducting open meetings as notified, published and provided by law no less than semi-annually. The Special Master found that the Ethics Commission did have regular public meetings in 2007 and prior years at the Indian Springs Neighborhood Resource Center with members of the media present and meeting minutes being published. The last meeting minutes that the Special Master could find were dated January 2008. Section 104 of the Ethics Policy requires that open meetings be conducted no less than semi-annually. Therefore, the BPU is currently in arrears on compliance with this requirement.

The five member Ethics Commission is appointed by the BPU Ethics Commission Appointment Panel which is comprised of three members appointed by a committee of the BPU Board of Directors. The Panel also selects one member of the Ethics

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Commission to serve as Chairperson for a two-year renewable term. The policy does include the term length of the Ethics Commissioners and implies that an Appointment Panel will be selected when there is an opening on the Ethics Commission or a Commissioner has reached the end of a term.

In 2005, at the end of the first two-year term for two of the five Commissioners (Education and Labor positions), an Ethics Appointment Panel was not put in place by the President of the Board of Public Utilities. However, the two incumbent Ethics Commissioners were reappointed to a subsequent four-year term only after the BPU Public Affairs Officer discovered in May 2006 that the terms for the two positions had expired five months earlier in December 2005.

The terms of three Ethics Commissioners expired at the end of 2007 and the Ethics Policy said that they were initially appointed to serve one single non-consecutive four-year term. (All successive terms shall be for one four-year term, subject to reappointment for one additional four-year term.) However, the three members with expiring terms, Commissioners Price, Steward and Anaya, were asked to extend their service until they were replaced or reappointed per the Ethics Commission Meeting Minutes of January 8, 2008. This, technically, is in violation of Section 104 of the Ethics Policy and they remain as active Ethics Commissioners today, a full twelve months after the expiration of their terms. Mr. Milan did note at the March 19, 2008 Board Meeting that there were three Ethics Commission positions that need to be filled – education, business and public.

Special Master Recommendations:

During the period of the Special master's work, both the Special Master and the BPU recognized that the Ethics Administrator position needed to be filled as soon as possible. The BPU Ethics Commission had not been functioning since Dr. George Frederickson's resignation as the Ethics Administrator became effective on February 15, 2008. The BPU had begun work on filling the position in the October/November time frame. The Unified Government and the Special Master were able to provide the BPU General Manager with the names of individuals and firms that had bid to become the Unified Government's Ethics Administrator in early 2008. The BPU found a qualified candidate to become the Ethics Administrator and a contract was negotiated and signed with Mr. Michael Manske in January 2009. He began work as the new BPU Ethics Administrator on February 1, 2009. Priorities for the new administrator would include providing any Ethics training that is arrears with the time gap that has taken place since Dr. Frederickson's resignation, taking care of any Ethics complaints that may be open, and getting the Ethics Commission meeting process functioning again.

The BPU needs to rigorously follow the Ethics Policy as it pertains to Ethics Commission appointments. Section 104 (a) of the policy specifically prescribes the length of the service terms for each of the five Ethics Commissioners and the BPU has missed the term expiration date of all five of the Ethics Commissioners. The concerns expressed above regarding timely reappointment or replacement of Ethics Commissioners need to be addressed so that the BPU, prior to the expiration of the Ethics Commissioners' terms,

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has a plan in place to keep the Ethics Commission manned within the Ethics Policy guidelines.

The Special Master saw several documents regarding the Ethics Commission Appointment Panel and some lack of direction on how it was supposed to function after the appointment of the first five Ethics Commissioners in 2004. The Special Master would recommend that the BPU revisit that issue if in fact clarification or modification is required remembering the goal to provide the best possible citizens to serve as Ethics Commissioners in line with the Ethics Program's Mission Statement.

In the current process, the Ethics Commission Appointment Panel is comprised of three members appointed by a committee of the BPU Board of Directors. An alternative appointment process to make the Appointment Panel more independent may be a desirable alternative. One way to do that would be to have an Appointment Panel with two non-BPU related members, such as:

1. One member or designee of the BPU Board of Directors
2. The Legislative Auditor who is independent from political choice and has some oversight responsibilities based the BPU being a unit of the Unified Government
3. The District Attorney

Confusion also appears to reside regarding the appointment of the Chair of the Ethics Commission. Section 104 (a) of the policy states that the Panel shall select one member of the Ethics Commission to serve as the Chairperson of the Ethics Commission for a two-year renewable term. Since it is not clear to the Special Master that the Ethics Panel has met since the initial appointment of the Ethics Commission in 2004, it is not clear how the current Ethics Committee Chair was appointed and his position renewed since Mr. Tom Bruns resignation in April 2006. It would also appear to the Special Master that Mr. Bruns was not reappointed to serve as Chair in January 2006 after his initial two-year term as prescribed by the policy.

Discussion with Ethics Commission Chair Michael Price indicated that he was elected to the Chair position by a vote of the Ethics Commission after Tom Bruns resignation in April 2006. Mr. Price believed that the Ethics Commission should be able to elect a Chair from within their membership of five. The Special Master supports this proposal and would recommend that the Ethics Policy be modified to reflect this.

The Special Master struggled to gather data on the Ethics Commission work for the past years. Probably the largest contributor to this struggle was the fact that so many of the people that had been associated with the Ethics Program since its inception are no longer actively associated with the BPU. These people would include:

- Dr. George Frederickson, the Ethics Administrator, who resigned in February 2008
- Mr. Michael Manske, the Assistant Ethics Administrator, who resigned in January 2007

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- Various BPU employees that worked with the program who have since retired or are on leave of absence including Susan Allen, the Public Affairs Director and Marc Conklin, the Chief Administrative Officer

With this in mind, the Special Master would recommend that the BPU's Ethics Commission web site be expanded to include the agendas and meeting minutes for the various meetings that the Commission holds. This web site addition would be within the spirit of the Ethics Commission Mission Statement of promoting public trust. The current Ethics Commission Chair supported this proposal.

The Special Master also recommends a designated BPU employee be put in place to maintain the Ethic Commission records in order to better administer the program. In some areas of Ethics inquiry and complaints, the issues involve Personnel matters. In designating a BPU employee, the General Manager must be sensitive to this issue so that Personnel issues are handled appropriately and do not become public.

The Special Master also recommends that the Ethic Commission and Training Department continue to proactively monitor ethics training for all elected officials, officials and employees of the BPU. Meeting minutes and training records reviewed by the Special Master indicate that the BPU has done a good job on this issue through 2007 and that the Ethics Commission was satisfied with the training material and completion rate of employees. Active management of training is required on an ongoing basis in order to remain within compliance of the established policy.

Employee Wages, Benefits and Recognition

In discussions with the General Manager, he noted that an extensive review of employee wages and benefit plans is planned to be completed in 2009. This would be done as a part of the planning process for upcoming contract negotiations and would include benchmarking versus other major utility companies in the Kansas City metropolitan area. The General Manager plans to have the project begin early in 2009. Therefore, the Special Master did not review employee wage and benefit related issues.

Background

The Special Master did review some outside data as it related to Employee Recognition as requested in a December 31, 2008 letter from the Legislative Auditor. The analysis basis for the Special Master's comparison was the State of Missouri Audit of Springfield, Missouri's City Utilities (CU) that was completed in late 2007.

The Missouri State Auditor did review CU's employee awards and payroll policies. The Missouri State Auditor was critical of the dollars spent on safety and service awards and stated, ". . . awards have been given to employees which do not appear to be prudent, reasonable, or necessary use of utility funds."

The following is directly from the State of Missouri Audit Report on City Utilities:

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“CU purchased safety awards totaling \$25,647 during the two years ending September 30, 2007. Annually, the utility gives safety awards for every five years based on employees who have reached safety milestones by not experiencing a lost-time injury. The awards include: executive pen and pencil sets, pewter belt buckles, marble bookends, windbreaker jackets, clocks, collegiate style gold and silver rings, weather stations and pocket watches. Some of these safety awards have significant values. For example, the collegiate style gold ring, pocket watch, and wall clock are purchased for \$475, \$240, and \$205 each. In addition, safety awards are presented to all utility employees regardless of the duties assigned. For example, safety awards are given to human resource and purchasing employees.

In addition, CU purchased years of service awards totaling \$26,964 during the two years ending September 30, 2007. Lapel pins with blue sapphires, rubies, emeralds, and diamonds are given for every five years of service.

These expenditures do not appear necessary or essential to the operation of the utility. The utility has a fiduciary duty to ensure funds are expended in a manner that provides the greatest benefit to the utility. It also appears questionable why some utility employees such as clerical or administrative should receive safety awards.”

The State Auditor recommended that the CU Board of Public Utilities “ensure disbursements are necessary and prudent uses of public funds.”

City Utilities response to the audit comments was as follows:

“The Board supports management’s efforts to encourage a safe workplace. Since it is well documented that safety awareness results in fewer work-related accidents and in turn, fewer customer dollars spent on workers’ compensation costs, and because employees in all types of jobs incur job related injuries, City Utilities’ safety program includes recognition for all employees who have excellent safety performance.

Similarly, the Board supports management’s efforts to recognize the value of employees’ service. The service award program helps reduce turnover costs to CU and saves our customers money, as this program assists CU in motivating, recognizing, and retaining its most valuable resource – its employees.”

BPU Specific Review

With the above as background, the Special Master did discuss the BPU’s Safety and Service Award Recognition policy with members of the BPU management team. The BPU does provide both types of recognition for its employees.

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BPU Safety Awards:

In the area of Safety Awards, the BPU provides quarterly Sears Gift Cards to employees that have not been involved in a safety incident in the calendar year quarter. The card's value is \$30 for higher risk employees that are generally associated with field operations and \$20 for employees in administrative type operations. The BPU spent approximately \$68,000 in 2007 and \$67,000 in 2008 on employee safety awards. In addition, after one year of service, employees are eligible for an Employee Safety Day Award. This award is one day off with pay for not having a Lost Time Incident in the prior year.

The Special Master would also note that individual safety awards to employees are not universally used by all companies. In a previous work environment that the Special Master was associated with, benchmarking activity with other companies found that many do not provide individual awards. Their philosophy was that individual employees would feel pressure to not report safety incidences for fear of jeopardizing an award. This is counterproductive to the true goal of providing a safe work environment for all employees since potential areas of safety risk would not be recognized and corrected. Therefore, many companies do not provide individual safety awards.

The Special Master also met with members of the BPU Staff to discuss industrial safety, how it is administered at the BPU and the costs of the employee Safety Recognition Program. The Special master was encouraged by the tone of the meeting in that the BPU has been working for many years on the cultural transformation to the position that Safety is everyone's responsibility and not just the responsibility of the Safety Department.

The staff shared data with the Special Master that demonstrates improvement in the number of safety incidents and the costs of incidents over the past thirteen years. Costs include the actual medical expenses as well as Worker's Compensation expenses. The below table recaps the 2008 reduction since 1998, the final year before the new Safety program that includes individual recognition began:

2008 Reduction Since:	Number of Incidents	%	\$'s
1998	140	73.7%	283,172.79

The data demonstrated in the above table shows that the BPU has made a significant improvement in safety with a 73.7% decrease in safety incidents. The medical and Worker's Compensation cost savings versus the base year also more than pays for the costs associated with the Employee Safety Awards Program.

Even with the above analysis, the BPU costs associated with its Safety Awards Program are substantially higher than that of City Utilities in Springfield, Missouri. Since the Missouri State Auditor was very critical of the City Utilities Safety Program, it would be in the BPU's best interest to review its current program versus other utilities to ensure the BPU's practices and costs are not out of line within their industry segment. For example,

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if the BPU chooses to continue a Safety Award Program, the utility may want to evaluate award frequency. As noted above, City Utilities gives out a Lost Work Day Avoidance Recognition Award every five years versus the BPU doing it annually.

BPU Service and Retirement Awards:

The BPU does provide both Service and Retirement Awards to its employees.

Service is recognized in five year increments and the awards are usually given out twice a year at a luncheon held in the Board Room. The total cost for these awards including the lunch was approximately \$19,500 in 2007 and \$25,900 in 2008.

Retirement gifts are also provided to employees to recognize their many years of dedicated service. The number of employees retiring and the cost of the retirement awards for the past two years can be summarized as follows:

	<u>2007</u>	<u>2008</u>
Number of Employees Retiring	41	28
Cost of Retirement Gifts	\$12,970	\$9,576

A food guideline of \$200 for retirement parties does exist within the BPU.

Similar to the Safety Awards recommendation, the Special Master would recommend that the BPU benchmark itself against other utility companies in the area of employee service and retirement awards. The BPU's expenses in this area are significantly higher than that of City Utilities, and, again, City Utilities was criticized by the Missouri State Auditor on their level of expense.

With the benchmarking completion, the Special Master would also recommend the BPU review and modify its current guidelines, as required, to ensure that the utility effectively balances the need to spend the ratepayers' dollars in a prudent manner and, at the same time, provide for positive engagement and recognition of the utilities' valued employees.

Special Master Call Line Messages

During the term of the Special Master's work, ten messages were received. They can be summarized as follows:

- Six were related to BPU administrative type issues and the five callers that left names and/or phone numbers were contacted by BPU staff on their concerns. The six subjects were:
 - Why do I mail my bill to a Kansas City, Missouri address
 - I do not understand the Payment In Lieu of Tax (PILOT) charge on my bill
 - I do not understand the development fees charged by the BPU
 - I do not understand the billing procedures

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- I have concerns with service shut off issues and how they have been handled even after payment arrangements were made with the BPU
- I have concerns with BPU spending and want to know when the next Board meeting is
- One was a call from a reporter
- Three fell into the realm of the Special Master. All were concerns over past Personnel practices and issues at the BPU. For legal purposes, the information will not be disclosed in this report.

One of the three callers left their contact information. The Special Master did meet face-to-face with that individual on December 17, 2008. The caller had been a long term employee of the BPU. The caller's career began in the 1980's and ended in recent years. The caller expressed many concerns as they related to past employee management practices at the BPU. Examples would include:

- The BPU, especially in the caller's first two decades with the utility, practiced the "old style command and control" management of employees. In other words, employees were not "empowered" to do their jobs.
- In the caller's opinion, many "penny wise and pound foolish" decisions were made that cost the utility money over a period of years.
- The caller believed that some Management reports were misrepresented to make utility operations look better than they really were.
- The caller believed that some unneeded job positions were created and filled with a specific employee based on that employee's relationship or political alliance with BPU managers or Board members.
- An annual employee review and appraisal process was not always completed and in the years it was done, the process was not used as an aid to employee development.

The Special Master has had several conversations with the current General Manager Don Gray on Personnel related issues. In all of these conversations, the General Manager has indicated that he is working very hard to change the organization's culture to better engage and empower the employees. He stresses this in his staff meetings and makes every opportunity to do it in his everyday job performance. Some specific examples of this changing culture initiative include:

- The emphasis on continuing education so that employees can improve their own skills sets, and, thereby, have additional career development opportunities as well as bring an expanded skill set to their job each day.
- The fact that many of the senior staff members have worked at other utilities and companies prior to being employed by the BPU. This allows them to operate outside of what some might say is the "not invented here" syndrome. At the same time, their presence creates some animosity with certain employees that believed that they deserved to be in that specific job position.

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- Work that needs to be completed in 2009 around a formalized employee appraisal process. This work is still in a conceptual stage, but is something that the current General Manager recognizes should be done to improve the entire organization.

The other two Call Line concerns were around one specific Personnel issue and the Special Master did address those concerns with General Manager Don Gray on December 16, 2008. Mr. Gray was very familiar with the issue and had extensive discussion with the Special Master on the matter. Special Master is satisfied that the Personnel matter was handled appropriately and within the BPU's Personnel Policy.

In addition to the above calls, one written letter of concern was received. The writer wanted to know the annual cost of keeping the Kaw Power Plant idled. On December 31, 2008, a written response was provided to the person as well as business rationale on why keeping the plant in that state is important to the BPU.

Conclusion

As stated in the overview, during the course of the review, the BPU Board and Staff were fully cooperative with the Special Master. They were very supportive of the Special Master review process that had been established, open and candid in various one-on-one and group meetings that were held, and timely in providing data to the Special Master.

As benchmarking data was developed by the Special Master and recommendations were presented to the BPU, the organization did engage in healthy, positive dialog on the benchmarking data, how the BPU could modify its practices to meet the "norms" as established by peer utilities and other standards of excellence, what the roadblocks to change would be and how the BPU could overcome the issues created by change. The Special Master recommendations have been adopted or are in the process of being adopted by the BPU.

The challenge for the BPU Board and Staff will be to implement the recommended improvements and changes in a timely manner so as to improve the operational efficiency of the Utility and to build the level of public confidence in the BPU. This will help enable the BPU to remain a strong community asset to the citizens of Wyandotte County.