

SECTION 305 NGENC

Executive Board Conference Call Meeting

MINUTES AUGUST 20, 2013 11:30AM EASTERN CONFERENCE CALL

FACILITATOR	<i>Bill Bronte, Chair, S305 NGENC Executive Board</i>
ATTENDEES	Executive Board Members: <i>Bill Bronte, Dale Engelhardt as proxy for Mario Bergeron, Dan Black, Paul Nissenbaum, LeAnna Wall, Kevin Lawson, Allan Paul, Charles Poltenson as proxy for Ray Hessinger, Tammy Nicholson, Tammy also as proxy for John Oimoen, Johnson Bridgwater, Support:</i> <i>Arun Rao, Steve Hewitt, Leo Penne, Shayne Gill, David Ewing, John Tunna, Kevin Kesler, Chad Edison, Jeff Gordon, Nico Lindenau Ashok Sundararajan, Sara Sarkhill, Vincent Brotski, Dave Warner, Patrick Centolanzi,</i>
ABSENTEES	Executive Board Members: <i>Mario Bergeron, Ron Pate, Eric Curtit, Ray Hessinger, John Oimoen, Paul Worley Support:</i> <i>Tim Hoeffner, Jason Biggs, Larry Salci, Melissa Shurland, Darrell Smith, Martin Schroeder, Brian Beeler II</i>

WELCOME/ROLL CALL/ACTION ITEMS REVIEW

1.

Opening – Bill Bronte-chair:

Chairman Bronte opened this conference call meeting of the NGENC Executive Board and asked Steve Hewitt to call the roll.

2.

Roll Call – Steve Hewitt, Manager, S305 NGENC Support Services:

After the call of the roll, it was determined that a quorum was present.

3.

Action Item Review –Steve Hewitt:

Review of Open Action Items

The locomotive procurement remains as a standing agenda item to keep the Board updated as to its progress. **IDOT is responsible for providing bi-weekly updates. Status: The RFP was released to the industry on August 8, 2013. Steve Hewitt provided the RFP information and press release (received from IDOT and FRA) to the NGENC Executive Board, the Technical subcommittee and to the 225 members of the 305 NGENC industry participants.**

Jeff Gordon will continue to provide the AASHTO, Amtrak and FRA public affairs officers with email notifications of NGENC activities. **Status: Jeff Gordon Provide the information on the RFP to the public affairs offices of AASHTO, Amtrak and FRA to continue the coordination of information.**

The NGENC Future working group DRAFT concept paper: **Status: The paper had been vetted by certain key stakeholders and, on August 12, 2013, it was circulated to the Executive Board email list. Comments were requested to be sent to Steve Hewitt by COB on Friday, August 16, 2013. Three sets of comments were submitted. Steve Hewitt distributed those comments to the working group to better prepare them for today’s discussion under agenda item #10.**

Strategic discussions regarding future funding for the NGENC and next steps to austerity: **Status: On the last call, the Executive Board asked Dan Black and Darrell Smith to update the Treasurer’s report given at the Annual Meeting, and to provide the Board with the status of the current budget – what is left; what has been spent, and what are the steps to take in order to extend the NGENC beyond March 31, 2014. AASHTO was also asked to provide a report to the Board on the status of the support services budget.**

For today's call, agenda item 6 will address the AASHTO Support Services Expenses, but the Treasurer's report will be provided on a future call.

Agenda item #7 will include a further discussion on steps to austerity.

As part of the effort to fund the NGEC and extend the agreement, the FRA (Paul Nissenbaum) will continue to look for potential areas of flexibility in regard to providing funds to keep the NGEC going beyond March 31, 2014, and will keep the Board apprised of the status of this effort. **Status: This will be discussed, also, under agenda item #7.**

Filling the vacancy created by Al Ware's resignation from Georgia State service and the NGEC: **Status: On the last call the following actions were assigned:**

Bill Bronte will reach out to Tim Hoeffner, Michigan DOT to see if he would be interested in filling the Board vacancy.

Ray Hessinger, NYSDOT, will reach out to Pennsylvania and Connecticut to see of their interest.

Ron Pate, Washington State DOT, will reach out to Oregon.

Shayne Gill, AASHTO, will talk to all of the states during SCORT and will ask Secretary Schneider, IDOT new chair of SCORT to make a personal pitch during SCORT, for membership in the NGEC.

A discussion on progress made will take place under agenda item # 8.

The Technical subcommittee has been provided with a draft document requested by the APG that categorizes ADAAG items with regard to feasibility. The subcommittee will report back to the Executive Board on its feasibility assessment after its August 15th conference call. The Board anticipates providing a letter to the Access Board with its recommendations by the time the Access Board begins its update process (September 15, 2013) **Status: Melissa Shurland, FRA, provided feedback on the comments received thus far on the ADAAG document. The comments received were distributed to all subcommittee members on August 15, 2013. Since a key technical working group (the Interiors) had not met to review the document – no action was taken. The Interiors group is to meet on Tuesday, August 20, 2013 and will provide its comments Melissa Shurland following the call.**

Intellectual property: **Status: Bill Bronte, Steve Hewitt, Shayne Gill, Leo Penne and Vincent Brotski were asked to hold a conference call in regard to AASHTO holding the NGEC intellectual property in the interim as the NGEC determines its future organizational structure. The call was held on 8-12-13. Under agenda item # 9, Vincent Brotski will provide the Board with a brief summary of the discussion.**

The SFTF review of task 1: **Status: The SFTF met on August 12, 2013 and discussed the comments received in regard to the draft task 1 document. Comments were many, and a general view by SFTF members is that the contractor "has a lot of work to do to get task 1 right." A core team has been established to compile/condense the comments and discuss with the contractor what needs to be done to get the document to the point where it can be useful. All other work on this project has been stopped pending the task 1 revision effort. On August 19, 2013 those comments were sent by Eric Curtit to Jeff Mann, the lead for the contractor on this project.**

The ATF has approved revised NGEC contract procedures: **Status: The Executive Board adopted the revised NGEC procedures on August 6, 2013. Steve Hewitt has sent the procedures to AASHTO asking that they be posted in place of the original procedures. Task Complete**

Review of Trainset specification Rev A: **Status: On the last call it was agreed that a sole source contract for Revision A review by consultant Larry Salci would be prepared. Larry would provide the anticipated cost and tasks to AASHTO. AASHTO would then present the proposed contract to Darrell Smith (acting chair of the ATF) and he will determine if an electronic vote process should be used to expedite the contract rather than wait till the end of August for the next ATF call. Agenda item # 5 will bring the Board an update as to where this action stands.**

Backgrounder document and the new one pager document: **Status: The Backgrounder has gone through 6 printings and is still requested. This week, Steve Hewitt sent out 5 copies to a member of the industry who requested that number. Leo Penne has developed a one page document (double sided) which he will provide a status on.**

Leo Penne reported that he is finalizing the one pager and is making corrections/updates to the original Backgrounder. Both documents will be sent to Steve Hewitt to distribute to all Board members for review.

4. Approval of the minutes from August 6, 2013 – Bill Bronte:

On a motion by Allan Paul, NCDOT, and a second by Charlie Poltenson, NYSDOT, the minutes from the August 6, 2013 conference calls were approved without objection or exception.

5. Review/consider amended tasks and costs – Larry Salci contract to review Rev A – Leo Penne:

Leo Penne, AASHTO, reported that the contract for Larry Salci to review Trainset Rev A is ready to be executed. He noted that under the new NGECC procedures, the final step is to get Administrative Task Force approval of the contract and expenditure of funds (not to exceed \$8500.00).

The original intent was to have the ATF approve the contract via electronic vote. However, the acting chair of the ATF (Darrell Smith) is on vacation. Steve Hewitt will try to contact Darrell to see if he prefers that it go to electronic vote or if it simply is taken up for consideration on the next ATF call on August 30, 2013.

6. Update: AASHTO Support Services Expenses – Leo Penne/Shayne Gill:

Leo Penne reported that “we have reviewed the support services spending to date and we estimate that we will be short on our expenditures by about 20% below the budget level.” This equates to approximately \$160,000 of the budgeted amount being available at the end of this budget period - March 31, 2014.

The reasons for the available funds is that there have been fewer face to face meetings held this year than anticipated, thus meeting costs and travel reimbursement costs have been reduced. Leo also noted that some state officials are not asking to be reimbursed, so their state DOT is absorbing the cost.

Leo reiterated, “the total expected to be available for re-programing beyond March 31, 2014 is \$160,000.” He also pointed out that this estimate does not take into account the contracts with PB, Larry Salci, the Casamar group and the proposed RFP for exploring financing options and developing an implementation plan. AASHTO does not determine the status of those items in its role as the contracting agent.

Bill Bronte asked Dan Black, Amtrak, (NGEC Treasurer) “where are we overall – it is information that will be vital to have for the Columbus meeting.”

Dan repeated what Steve Hewitt had reported that Darrell Smith was on vacation, but that they will be ready to provide a full report for the Columbus meeting.

Bill emphasized “it will be a key item along with the topic of the future structure of the NGECC.”

Leo Penne asked if the Board anticipated any other face to face meetings other than the two planned already (and

accounted for) – the one in Columbus in September 2013; and the Annual Meeting to be held in DC in late February, 20145.

Bill Bronte and Steve Hewitt commented that they believed those would be the only face to face meetings, although it is possible there may be a small task force meeting at some point, but no large face to face meetings other than the two noted.

**7.
Discussion Planning steps to move to Austerity – Bill Bronte:**

Bill Bronte segued into the next agenda item – the bi-weekly topic of moving to austerity. He noted that the fact that our face to face meetings are always tied in with other meetings like the AASHTO SCORT meetings has enabled some states to pay for the travel and thus the reduction in state travel reimbursement by the NGEC.

Bill then asked Paul Nissenbaum, FRA, "how are you coming with your effort to look under rocks for additional NGEC funding?"

Paul commented that "there is no obvious source available, we will look, but we will need to demonstrate necessary resources and when they will run out. We must show a clear picture of the burn rate status and the ongoing burn rate." He added that he has to have that clear picture of our status before he "pushes too hard."

Bill Bronte reiterated that this will be a critical discussion to have at the face to face meeting in September, and is why we will need a very clear Treasurer's report with what has been spent, what is left and what is expected to be available beyond the year end budget date – March 31, 2014.

**8.
Status: Filling the Board Vacancy created by Al Ware's resignation – Bill Bronte:**

Bill Bronte reported that he had no status update on the search for a state to fill the vacancy left by Al Ware's departure. Eric Curtit was not on the call today, and his action was to reach out to Tim Hoeffner, Michigan. Others who had actions were Ron Pate and Ray Hessinger (to contact Oregon, Pennsylvania and Connecticut) were also not on today's call, so Bill tabled this discussion until the next Board call.

At this point, Steve Hewitt asked if the next call, scheduled for September 3rd, the day after Labor Day, should remain as is, or should it be rescheduled.

The general consensus was to change the September 3 call to September 4th at the same time (11:30-12:30 EDT)

Steve will send out notices to all calendars.

**9.
Summary of discussion re: NGEC Intellectual Property – Vincent Brotski:**

Bill Bronte opened the discussion on Intellectual Property by describing California's stringent requirements for "maintaining and protecting" the state's intellectual property. A small group comprised of Leo Penne and Shayne Gill, AASHTO, Steve Hewitt, Bill Bronte and Vincent Brotski held a conference call and discussed a number of issues related to intellectual property.

Vincent Brotski, Amtrak, reported that there has been concern raised about protecting intellectual property developed by the NGEC. The general understanding among Board members was that unless an entity was incorporated it could not hold its intellectual property. Being incorporated is not necessary under Title 17 of the copyright law. Unincorporated organizations can register both copy rights and patents. "The simple answer is it (the NGEC) does not have a problem, the specs are protected...In actuality, they do not need a copyright. The moment a spec is published it is protected." Vince emphasized, however, that "if you do copyright it, the world knows that it comes from the NGEC." Further, Vince recommended that the NGEC "copyright all of our materials with a copyright symbol on it (copyright 2013 NGEC)."

This would include the specs and other materials such as the Backgrounders etc.

Vince noted that there were a number of other issues that came up during the call, which have various impacts connected to them and would need to be considered before action was taken.

A summary of the call is presented in these minutes as prepared by Vincent for the members of the NGEC. It includes the initial questions and Vince's response, and the additional questions/issues raised:

1. *Question Presented: Does the NGEC need to incorporate as a corporation to hold/protect intellectual property, such as car specifications?*

Response from Vince Brotski: No. Per Title 17 of the United States Code, (U.S. Copyright Law of 1976, as amended), unincorporated organizations may register and copyright materials. Per Title 35 of the United States Code, unincorporated organizations may apply for patents.

2. *Question Presented: What should the NGEC do today to protect copyrightable material?*

*Response from Vince Brotski: The NGEC should mark its printed materials accordingly:
© 2013 Next Generation Equipment Committee.*

3. *Other Considerations and Topics Discussed*

- a. *NGEC members should have the right to use the NGEC specifications free of charge. What about third parties? Should they be able to access specifications for free?*
- b. *If there were any protected intellectual property used by NGEC contributors when developing the specifications, does the NGEC have the rights to that intellectual property?*
- c. *Have specification contributors assigned, licensed or granted any proprietary rights to the NGEC so that the NGEC does not run afoul of the owners of intellectual property used for the specifications?*
- d. *How will the NGEC decide who can have access to the specifications and who cannot?*
- e. *Will the NGEC charge a license fee to non-members to access the specifications developed by the NGEC? If so, who will handle this task? How about charging a membership fee?*
- f. *If the NGEC were to disband after copyrighting materials how could copyright ownership be transferred? Using an assignment agreement, the NGEC could assign its intellectual property to AASHTO or Amtrak or any other entity.*

Some of the questions, Vince noted, "will be answered with the (NGEC Future) concept paper as it goes forward."

Patrick Centolanzi, FTA asked "Why would we want to limit access?"

Kevin Kesler, FRA, responded "to be sure they remain pure...the configuration could change...people making those changes should check back in with the NGEC library."

The sense from Kevin was that it is important to control the standards rather than have them migrate.

Bill Bronte noted that he has a different sense of this. "The states should not be charged by the builder for designs developed by the NGEC."

Patrick noted, "we don't design, we spec...we develop collaborated specifications."

The discussion got back to what happens if the NGEC "goes away"? Does AASHTO do standards?

Leo Penne described AASHTO as "a standards machine."

Kevin Kesler added "this discussion begins to get deeper than this Executive Board call. We do need to manage changes and maintain a library in order for them to have value. An entity needs to be developed...until we are incorporated the standards need to go to someone else like AASHTO or APTA."

Kevin asked "do we anticipate that designs for individual elements of the intellectual property will need to be licensed by an entity?"

Vincent responded "we would need a methodology to do it. The NGEC is not set up now to do it – AASHTO would be."

Patrick noted that wide use of the specs would be guaranteed if you go through someplace like AASHTO or APTA, and noted that "there is a path for issuing standards as demonstrated by APTA."

Bill Bronte interjected "this will be an ongoing discussion, we do not want states to lose control..." and he asked "How do we move forward?"

Shayne Gill, AASHTO, commented that there is one take away and that is that we (AASHTO) should add Copyright 2013 NGEC to all of the documents on the NGEC website. This will include specs, backgrounders, whatever is produced by the NGEC.

This was agreed to by general consensus.

Kevin Kesler then recommended a small task force "be formed to identify future needs and ways to manage to meet those needs including AASHTO or APTA."

At this point Kevin volunteered to be a task force member, as did Patrick Centolanzi, Shayne Gill, FRA suggested Whitney Phend as well as Kevin Kesler and Bill Bronte would want to be involved and get his state's IP attorney involved as well.

Ultimately it was decided that this will be an agenda item for the face to face meeting in September and that the task force would not meet formally until after the meeting has occurred.

During the interim, members are asked to pull together things they believe are needed on the intellectual property side and some potential solutions.

Steve Hewitt agreed to provide all members with the Vince Brotski's summary of the call held among himself, Bill Bronte, Steve Hewitt, Leo Penne and Shayne Gill. Steve said he would include them in the minutes and as a separate document to be sure everyone had the summary as a starting point.

10.

Discussion/Review: NGEC Future Working Group DRAFT Concept Paper – Bill Bronte:

Bill Bronte introduced the discussion of the NGEC Future Working Group's concept paper, providing a brief history of the working group's efforts and how they came to develop the concepts included in the DRAFT paper circulated by Steve Hewitt to all Board members and support staff on August 12, 2013.

The comment period ended on August 16, 2013, and Steve Hewitt reported that very few comments had come in (3 sets of comments in total).

Patrick Centolanzi commented that "whatever we become, we should be welcoming to Amtrak, commuter rail" etc. He noted that the paper recommends making the NGEC a subsidiary of Amtrak "How are we welcoming to commuter railroads and others" if we are a subsidiary of Amtrak.

Bill Bronte commented "I agree with being welcoming. We are not trying to become exclusive... I know there are concerns at APTA about that, but I do not view it as exclusionary."

Kevin Kesler commented "Patrick means that if Amtrak takes it (NGEC) over it makes it difficult for commuter railroads to become involved in the activities." He added that he understood this as an alternative because there is such a lack of funding, but added that if funding is made available, Amtrak should not be the way to go.

Bill Bronte stated "I view it as an arranged marriage."

Dave Warner, Amtrak, and a member of the working group, reminded those on the call that the current NGEC charter is for corridor rail, not commuter. It should not preclude commuter, but currently commuter rail is not a part of the charter of the NGEC.

After asking states if they had any comments to add and hearing none, Bill Bronte recommended that the comment period be extended for another week, and asked states to please weigh in.

Dave Warner noted that the working group had intended to provide a better concept for the face to face meeting in September and "we may change the September face to face agenda" by extending the comment period.

Bill Bronte noted "unless there is more discussion, do we know if this is something the Board wants to continue, if we do not have another solution. I see it as we have a reasonable path forward with challenges." He asked all members to take a look at page two of the concept paper – "Amtrak is the most reasonable alternative."

Patrick Centolanzi recommended that a volunteer organization "under AASHTO or APTA is a better way to go."

Dave Warner commented that "a touchstone of the Vision Working Group's discussion was that continuing as a volunteer body is unsustainable. It is very difficult to proceed that way."

Bill agreed, "as a volunteer body there are things we cannot do" and he cited examples such as financing, maintenance providers etc. "Much of this cannot be done by a volunteer group."

Nico Lindenau recommended that there be a second call on this topic before the next Board call, so "we can make further decisions going forward."

This led to agreement that there be a conference call of the working group members – Steve Hewitt will work with Bill Bronte to get it on everyone's calendar prior to the next call. It was also agreed that the comment period would be extended to all members of the Executive Board including support staff. Steve Hewitt will re-send the concept document following this call and the comment period will extend until COB on Friday August 23, 2013.

All comments are to be sent to Steve Hewitt.

Shayne Gill, AASHTO, commented that the working group only includes three states, two Amtrak representatives and the FRA Board member. "We may need to include additional members in the conversations."

Nico noted that there are comments out there that don't say what it is that they do not like about what is proposed. They should offer comments on what they like or do not like and why. This would provide the working group with a better chance to figure it out.

He suggested that all states comment on their concerns and send it in asking Steve to not make it attributable if that is preferred.

Bill Bronte again emphasized "we do need to get input from the Board members."

After fully agreeing to extend the comment period and hold a working group call prior to the September 4th Executive Board call, additional discussions surfaced around the topic.

Vince Brotski noted that "what Patrick has said about the standards process is a big topic of discussion."

David Ewing added "the central function going forward (for the NGEC) is standardization and a repository – these are the core functions."

Dave Warner pointed out "we have a method in place for maintaining the specifications right now." Dave added. "We do specs and APTA does standards." He noted the value of those APTA standards, and how having had them available for referencing in our specifications was invaluable. He then reiterated "we have a procedure for keeping the specs up to date."

Bill Bronte noted that he believes that specs are only a part of much work that we (the NGEC) should do. Bill cited the difficulty with getting multi-state procurements accomplished as a function that is very important to have the NGEC involved in. The procurements were relatively simple, but the multi-state nature made them difficult. It is important that the NGEC acts as a pooling entity.

As the time set aside for today's call was drawing to a close, Bill Bronte reiterated that the actions are that the comment period will be extended until COB on August 23, 2013; that Steve Hewitt will send the concept document back out to be sure everyone has it; and that the working group will meet next week to further discuss the comments and bring something back to the Board on September 4th for "a more robust discussion."

**11.
Adjourn:**

With no further business to come before the Board today, Chairman Bronte adjourned today's conference call meeting at approximately 12:55pm EDT.

The next Executive Board conference call is Wednesday, September 4, 2013

Decisions/Action Items

The locomotive procurement remains as a standing agenda item to keep the Board updated as to its progress. **IDOT** is responsible for providing bi-weekly updates. With the RFP currently out to the industry, there may not be a lot to report on at this point in time.

Jeff Gordon will continue to provide the AASHTO, Amtrak and FRA public affairs officers with email notifications of NGEC activities. (ongoing)

The comment period on the concept document is extended until COB on August 23, 2013. Steve Hewitt will send the concept document back out to be sure everyone has it. The NGEC future working group will meet in advance of the September 4th Board call. This topic will be on the September 4th agenda for further discussion.

Dan Black and Darrell Smith will present a full Treasurer's report at the September 26, 2013 Executive Board meeting.

FRA will continue to "look under rocks" to see if there is some flexibility in other programs which may provide additional funds for the NGEC, but will need to have a clear picture of expenses, burn rate and anticipated funds remaining before they can push too hard.

The Technical subcommittee has been provided with a draft document requested by the APG that categorizes ADAAG items with regard to feasibility. The subcommittee will report back to the Executive Board on its feasibility assessment after its August 15th conference call. The Board anticipates providing a letter to the Access Board with its recommendations by the time the Access Board begins its update process (September 15, 2013) ongoing.

Steve Hewitt will send out the Intellectual Property discussion summary to all members; and the task force that will take these topics up will meet after the September 26 meeting. This topic will be an agenda item for September 26, 2013.

The SFTF has submitted its comments on task 1 to the contractor and asked that they improve task 1 based on the comments provided. The Board will be kept apprised of the status.

Leo Penne will provide Steve Hewitt with a final draft of the new one page Backgrounder for review by all Board members; and will also send a revised original Backgrounder to Steve with updates that the Board members will be asked to review.

A sole source contract for Revision A review by consultant Larry Salci has been prepared. Steve Hewitt will send it to ATF acting chair Darrell Smith and ask if he wants to hold an electronic vote or wait to consider the contract on the ATF call on August 30, 2013.

Filling the vacancy on the Board: This item was tabled until the September 4th Board call. Actions remain:

Eric Curtit will reach out to Tim Hoeffner, Michigan DOT, to see if he would be interested in filling the Board vacancy.

Ray Hessinger, NYSDOT, will reach out to Pennsylvania and Connecticut to see of their interest.

Ron Pate, Washington State DOT, will reach out to Oregon.

Shayne Gill, AASHTO, will talk to all of the states during SCORT and will ask Secretary Schneider, IDOT new chair of SCORT to make a personal pitch during SCORT, for membership in the NGEN.

A volunteer from among Board members is requested to take over the Secretary duties as a Board officer which includes serving as the ATF chair.

AASHTO will include: Copyright 2013 NGEN on all NGEN specifications and documents.

ATTACHMENTS



**S305 NGEN Executive Board Conference Call
August 20, 2013
11:30 AM – 1:00 PM EDT
Call in number: 866 299 7945 passcode: 1601544#
Agenda**

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| 1. Open the Meeting | Bill Bronte |
| 2. Roll Call | Steve Hewitt |
| 3. Action Items Review | Steve Hewitt |
| 4. Approval of Minutes from August 6, 2013 | Bill Bronte |
| 5. Review/consider amended tasks and costs – Larry Salci Contract to Review Rev A | Leo Penne |
| 6. Update: AASHTO Support Services Expenses | Leo Penne |
| 7. Discussion: Planning steps to move to Austerity | Bill Bronte |

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8. Status: Filling the Board Vacancy created by Al Ware's Resignation
 9. Summary of discussion re: NGEN Intellectual Property
 10. Discussion/Review: NGEN Future Working Group Draft Concept paper
 11. Other

Bill Bronte

Vincent Brotski

Bill Bronte

All