

SECTION 305 FINANCE SUB COMM

MINUTES

SEPTEMBER 11,
2013

3:00PM EST

CONFERENCE CALL

FACILITATOR	<i>Dan Black, Treasurer S305 NGEC Committee Executive Board, and Chair of the S305 Finance Subcommittee</i>
ATTENDEES	<i>Dan Black, Brent Thompson, Kevin Kesler, Arun Rao, Darrell Smith, Steve Hewitt, Nico Lindenau, Sara Sarkhili, David Ewing, Eric Curtit, Shayne Gill</i>
ABSENTEES	<i>Jeff Gordon, Vincent Brotski, Bill Bronte, Ashok Sundararajan, Martha Gebbie</i>

DECISIONS MADE

1. Welcome and Open Meeting – Dan Black:

Dan Black opened the conference call welcoming all participants and asked Steve Hewitt to call the roll.

2. Roll Call – Steve Hewitt:

Steve Hewitt called the roll, and, initially, could not confirm the presence of a quorum. It became apparent that some of the members had not received the notice of the new access code. Steve Hewitt sent out a note to those not on the call and provided the new code. Eventually, as the meeting progressed, a quorum was confirmed.

Steve Hewitt agreed to delete the current Finance subcommittee calendar appointments and re-send a new recurring (every 4 weeks) appointment with the new access code.

Note: This action was completed as soon as today's call concluded – my apologies for the confusion. - Steve

3. Review of Action Items – Steve Hewitt:

Steve Hewitt provided a brief status update on all Finance subcommittee action items:

Open Action Items

On the next subcommittee call, Steve Hewitt and Darrell Smith will update the subcommittee on the August 6th meeting with AASHTO. **This topic will be addressed under agenda item #4**

Darrell Smith will review the RRIF white paper and determine if anything has changed, and report back to the subcommittee on the next call. **Status: Darrell Smith reported that he had taken another look at the RRIF whitepaper and found that nothing has changed.**

David Ewing will begin developing a hypothetical case study of financing dual mode locomotives and provide a progress report on the next subcommittee call. **This is to be discussed under agenda item 7.**

Ongoing action item – status of audit recommendations – **Agenda item 5**

4. Update: August 6, 2013 discussions with AASHTO staff – Darrell Smith/Steve Hewitt:

Darrell Smith provided an overview of the meeting that took place with AASHTO staff on August 6, 2013 at AASHTO offices. Attendees included: Leo Penne, Shayne Gill, Strat Cavros, Andrea Ryan, Andy House, Steve Hewitt, David Ewing and Darrell Smith.

The discussions covered a variety of areas, in part, to bring all parties up to speed on support service activities with the pending retirement of Leo Penne.

Discussions included a review of issues pertaining to the support services budget and current expenditures as well as the timing of AASHTO invoice submittals to Amtrak. AASHTO sends invoices to Amtrak quarterly, and although the Amtrak IG's audit called for monthly invoices, it has been agreed that quarterly invoices, in this case, are more cost effective and will continue.

Darrell Smith commented that invoicing has been dramatically improved and the invoices are much more detailed now than in the beginning of the NGEC. The invoices are now approximately 150 pages in length and include

detailed time records for AASHTO staff in support of the NGEC. This is something the auditors wanted to see, and AASHTO is in full compliance.

During the August 6th meeting, AASHTO staff reported that it was beginning to review the support services expenditures to date, and would provide the Executive Board with an estimate of what expenses have been incurred, and what savings may occur due to the fact that there will be less travel required during the remaining months, than first anticipated. This is due to fewer face to face meetings being scheduled by the NGEC Board, subcommittees and task forces, as well as the fact that some of the states are not requesting reimbursement for travel. Ultimately, AASHTO did provide to the Executive Board an estimate of what money may be left over in their support services budget at the end of the current grant agreement period (March 31, 2014).

Darrell also noted that, with Leo Penne's retirement (effective August 31, 2013) AASHTO's lead for NGEC support activities will be Shayne Gill.

5. Status Update: Addressing Audit recommendations – Darrell Smith:

Darrell Smith provided an update on the status of addressing the audit recommendations. He noted that great progress has been made in addressing those recommendations.

He noted that the NGEC had completely "revised and reissued" contract procedures, and that the recent contract executed with Larry Salci (for review of Trainset Revision A) was the first "evidence that we are following the new procedures."

AASHTO has provided documentation to Amtrak in regard to some of the expenditures noted in the audit report. While Amtrak will provide some comments back to AASHTO and request additional information, this is moving closer to a resolution.

6. Status; Preparing a Treasurer's report for the 9-26-13 Board meeting – Dan Black/Darrell Smith:

Darrell Smith reported that he and Dan Black are preparing a Treasurer's report for the September 26, 2013 Executive Board meeting to be held in Columbus, Ohio. The report will look at expenses to date versus the budget for the current year.

On August 23, 2013, AASHTO provided an update to the Executive Board that it is estimated that the Committee spend less money for support services than anticipated in the budget. This (as noted above) is primarily due to the fact that the Committee has held fewer face to face meetings than originally planned, and that some of the state representatives have not requested travel reimbursement.

Darrell reported that in total \$1.249 million has been incurred for all support service activities from a budgeted amount of \$1.609 million.

AASHTO has submitted the most recent quarterly invoice and it was a substantial one with the inclusion of \$199,997 in PB invoices for the Section 6 project. There is still about \$207,000 remaining on that contract. In the available funds, there is \$100,000 budgeted for an contract for consultant services to explore Finance options (Finance subcommittee effort) and there is \$100,000 planned for a possible consultant contract through the Structure and Finance Task Force (SFTF) for follow up/implementation upon completion of the current contract with PB. (As part of its move to austerity, the Executive Board has not yet determined whether or not these contracts will be moved forward).

Overall, Darrell reported, "we are on track – kind of tight" but this is not looking at the full \$4 million in funding provided to the NGEC. To date the numbers Darrell is referring to reflect on the second funding amount of \$2 million.

He also noted that in this budget there remains \$291,000 in contingency funds that remains "untouched".

The Technical subcommittee and the Administrative Task Force are both on track with their budgets.

Further Darrell noted that Amtrak OIG has not yet billed the NGEC for the Audit (\$50,000) and there is an additional \$50,000 budgeted for a wrap up at the end of the year.

In preparation for the September 26, 2013 Board meeting Darrell will have reviewed the \$4 million versus the \$2 million (noted above) and will break down the anticipated funds available in contingency and on things that have not started yet.

7. Progress report: Hypothetical case study – financing dual mode locomotives – David Ewing::

David Ewing provided an update on the action assigned to him on the last Finance subcommittee call – to develop a hypothetical case study for financing Dual Mode Locomotives.

“For context”, David reported, “on the last call we discussed the finance options project and how we would be best use (if at all) the resources budgeted.” He continued, “I volunteered to develop a hypothetical case as to how states could finance the dual mode locomotives with untraditional funding, based on the current lack of traditional funding being available.” In doing his research David “expanded the task to look at financing equipment in general.

David provided the observation that “in the absence of funding states have looked at non-traditional financing using state and regional sources”. One such example that David cited was the Denver Station Redevelopment model which utilized a variety of state and regional funding sources in combination with current programs. It may be worthwhile to look at this model and apply it to the purchase of equipment. Such purchases will need to meet similar challenges of expanding the context of sources.

The dual mode locomotive was selected as the hypothetical case study because it is a specification that the 305 Committee is expected to develop next. In this case, it may be possible to use New York State Energy Research and Development Authority (NYSERDA) funds to provide a financial contribution toward the purchase of dual modes. NYSERDA funds could leverage US DOE funding. David also noted that “expanding the pool of applicants would achieve economies of scale and allow for the potential use of FTA funds.”

David went on to note that it was important that Darrell Smith took a second look at RRIF loans to see if there have been changes because RRIF remains an important tool. The use of RRIF loans by Amtrak for equipment “was a pioneering effort.”

David went on to talk about other potential “new or restored tax finance instruments for equipment could move as part of a “Grand Bargain” – a tax reform package meant to address the Nation’s long-term funding needs as well as to amend the Budget Control Act provisions related to sequestration.”

David encouraged the Finance subcommittee to “look at the whole range of budget issues as you think through a financing research strategy”, and develop an SOW which would look at legal and finance issues related to a variety of potential sources.

David also noted two TRB NCRRP reports (NCRRP 03-01 Intercity Passenger Rail Service and Development Guide and NCRRP 07-01 Alternative Financing Approaches for Passenger and Freight Rail Projects) and suggested that “when and if the 305 NGEAC begins a financing study, a literature search should begin with these two reports”.

Additionally, David suggested that the following should be considered:

- “1. determine if Safe Harbor Leasing is a way to go
2. Draft a scope of work to ask for consultant assistance of “fleshing out” what an education effort on safe harbor would look like.
3. The scoping effort might be \$5K.”

In closing David added, “I think that once the tax code is opened for the “Grand Bargain,” we have a chance if we are prepared”.

David’s completed report (summarized in these minutes) can be found as an attachment to the minutes. An early draft was distributed in advance of today’s call, the attached, is a final version.

8. Approval of the Minutes of the July 31, 2013 Finance subcommittee call – Dan Black:

With a quorum having been established, the chair called for a motion to approve the minutes from July 31, 2013.

On a motion by Brent Thompson, Washington State DOT, and a second by Eric Curtit, Missouri DOT, the minutes from July 31, 2013 were approved without exception.

9. Other issues/questions? All:

It was agreed that the schedule of calls for the Finance subcommittee would be back on track for every four weeks, beginning on October 23, 2013. Steve Hewitt sent the meeting notice immediately after today's call.

**Next Finance subcommittee conference call – October 23, 2013
866 209 1307 access code: 9786620#**

Decisions and Action Items

The next Finance subcommittee call will take place on October 23, 2013 – a new calendar appointment will be sent to all subcommittee members scheduling the calls for every 4 weeks beginning on October 23, 2013. The new access code will be included in the calendar appointment.

Darrell Smith will continue to apprise the subcommittee members of the status of compliance with the OIG audit recommendations.

Darrell Smith will present the Treasurer's report at the September 26, 2013 Executive Board meeting and report back to the Finance subcommittee on its next call.

Once the Executive Board has determined its next steps in moving towards austerity, the Finance subcommittee will look at its next steps for exploring finance options.

ATTACHMENTS

SECTION 305 Finance Subcommittee Conference Call

**September 11, 2013
3:00pm. EDT
866 209 1307 pass code 9786620#**

AGENDA

- | | |
|---|----------------------------|
| 1. Welcome/Open | Dan Black |
| 2. Roll Call | Steve Hewitt |
| 3. Review of Action Items | Steve Hewitt |
| 4. Approval of minutes from 7-31-2013 | Dan Black |
| 5. Update: August 6, 2013 discussions with AASHTO staff | Darrell Smith/Steve Hewitt |

- | | |
|--|-------------------------|
| 6. Status Update: Addressing Audit recommendations | Darrell Smith |
| 7. Status: Preparing an updated Treasurer's Report for the 9-26-13 Board meeting | Dan Black/Darrell Smith |
| 8. Progress report: Hypothetical case study– financing dual mode locomotives | David Ewing |
| 9. Other issues/questions? | All |

Next Finance subcommittee call: October 23, 2013 – 3:00PM EDT

Call in # 866 209 1307 passcode 9786620#

September 11, 2013 FINAL DRAFT Comments and Materials – David Ewing

Summary of Financing a dual mode locomotive purchases:

In the total absence of current funding or financing, non-traditional state and regional Funding sources in combination with current programs may Offer the best opportunities for capital formation for a dual mode locomotive purchase. I would characterize this as a: the Denver Station Redevelopment Model applied to equipment. Denver:

TIFIA loan - \$145.6 million

RRIF loan - \$155.0 million

FHWA Grant - \$45.3 million

FTA Grant - \$9.5 million

ARRA Stimulus Grant - \$28.4 million

Homeland Security - \$353 thousand

RTD contribution - \$65.1 million

Other state and local funds - \$19.9 million

Land sales - \$18.4 million

Just as the Denver station redevelopment project was characterized as much greater than a transportation investment, the purchase of new dual mode locomotives would of necessity have to be seen in a large context. DOE does invest in transportation sustainability for example.

It is important to note that does far, the Denver Station Redevelopment Project was one of a kind. Because rail equipment purchases are unique, until there is a dedicated source of funding that is formulaically distributed, equipment purchases will also be one of a kind.

Sources for possible state/authority lead effort could include:

1. NYSERDA - New York State Energy Research and Development Authority- funds could be used to provide a financial contribution toward the purchase of dual mode locomotives;

- a. NYSERDA funds could leverage US DOE funding
- b. Expanding the pool of applicants would both achieve economies of scale and allow the potential use of FTA funds.

Context:

There is no combination of federal funding and financing available for intercity passenger rail equipment of any kind.

Short term prospects are cloudy at best:

1. General funds from annual appropriations for grants to either states through PRIIA section 301 and or 501 and or to Amtrak's capital account are uncertain. On September 10 HJ Res proposes to maintain FY 13 funding levels until December 15. A second round of sequestration cuts are possible early in 2014 (the date is uncertain due to provisions in the law related to adjournment).
 - a. It is worth noting that no intercity passenger rail equipment was funded under the recently released FY 2013 TIGER program. I am skeptical if any proposal were made.
 - b. It should be noted as well that the largest grant was \$20 million. Of the \$474 million in funding [awarded to 52 projects](#) in 37 states, \$146 million – roughly 30 percent of all funding – went to rail projects. Through five rounds now, TIGER – which stands for Transportation Investment Generating Economic Recovery – has invested \$808 million in rail projects in 48 states.
 - c. However, approximately \$450 million in TIGER funding could be available in FY 14.
2. Use of debt financing is problematic due to at least two factors: the very nature of the RRIF program and second, the need for a revenue stream to retire the debt.
 - a. However, Amtrak did receive the largest RRIF loan and the loan was equipment; the revenue stream identified by Amtrak to repay the loan remains a vital first step in exploring debt repayment strategies;
 - b. Amendments to enhance RRIF are again being proposed, the legislative vehicle is PRIIA reauthorization, a House T & I majority bill is expected to be released in mid-October. Beyond introduction, the timing and likelihood of passage of PRIIA reauthorization is problematic.
 - c. There is every reason to believe that bi-partisan efforts are underway in the Senate to explore a very broad range of policy and financing instruments that could be considered part of a finance title in PRIIA reauthorization.
 - d. Other new and or restored tax finance instruments for equipment could move as part of a “Grand Bargain,” a tax reform package meant to address the Nation's long-term funding needs as well as to amend the Budget Control Act provisions related to sequestration. The September 10 press release from the house Appropriations Committee is very instructive in this regard:

“Our country desperately needs a long-term budget solution that ends the draconian cuts put into place by sequestration, and that provides for a responsible, sustainable, and attainable federal

budget. It is my hope that this stopgap legislation will provide time for all sides to come together to reach this essential goal.”

- e. The prospects for such a “Grand Bargain” are especially cloudy; the uncertain policy forecast should not prevent thoughtful exploration of such strategies as off shore/ safe harbor leasing. An editorial comment: Such an effort has been delayed too long already especially in light of the complexity legal, financial and policy issues involved.

Non-traditional State and Regional Funding Sources in combination with current programs May Offer the best opportunities for capital formation: the Denver Station Model applied to equipment

- 2. NYSERDA - New York State Energy Research and Development Authority- funds could be used to provide a financial contribution toward the purchase of dual mode locomotives;
 - a. NYSERDA funds could leverage US DOE funding
 - b. Expanding the pool of applicants would both achieve economies of scale and allow the potential use of FTA funds.
- 3. On August 29, 2013, Sacramento Superior Court Judge Timothy M. Frawley ruled Assembly Bill 32 gave the Air Resources Board discretion to decide whether to adopt a cap-and-trade program and design the method for distributing pollution allowances. Under a 7-year-old law aimed at addressing global warming, credits could be used to fund high-speed rail equipment for California and based on agreements with Amtrak, help create the financial construct for Acela replacement equipment.
 - a. Cap and trade legislation on state basis could model applications for other regions.
- 4. Other research efforts to identify funding and financing sources of investment capital for intercity passenger rail equipment;

NCRRP 03-01 [Active]

Intercity Passenger Rail Service and Development Guide:

Project Data	
Funds:	\$400,000
Staff Responsibility:	Lawrence D. Goldstein
Research Agency:	Texas A&M Transportation Institute
Principal Investigator:	Curtis Morgan
Effective Date:	5/2/2013
Completion Date:	11/1/2014

The guide should address a broad range of issues and needs associated with planning, developing, and managing intercity passenger rail service which may include will include “Rolling stock procurement, provision, and maintenance.”

NCRRP 07-01 [Active]

Alternative Financing Approaches for Passenger and Freight Rail Projects

Project Data	
Funds:	\$400,000
Staff Responsibility:	Lawrence D. Goldstein
Research Agency:	CPCS Transcom, Ltd.
Principal Investigator:	Marc-André Roy
Effective Date:	4/23/2013
Completion Date:	2/22/2015

I believe that many people from 305 NGEC or their organizations are involved in the work of NCRRP.

It should be noted that when and if the 305 NGEC begins a financing study, a literature search should begin with these two reports.

Back up material:

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

305 NGEF Executive Committee, August 20, 2013, Draft Minutes, page unnumbered

David Ewing commented that if the subcommittee decides to suspend moving the RFP for exploring finance options forward, it may be a good idea to tap into the states and other NGEF participants for information. David's experience is that there is a "huge body of knowledge and a lot of information that could be tapped into internally."

He suggested that "during the pause we look inward and compile a list possible finance tools". A list would help us focus and would be a "useful effort."

David pointed to Amtrak's excellent briefing on the RRIF program that was provided to the Finance subcommittee last year as an example, and stated that a look back at that with a possible 1 page update may be beneficial.

Darrell Smith noted that "we came to the idea of the RFP" because we (Amtrak) were able to comment on RRIF due to our experience with it, but did not have experience with TIFIA or other such tools, and thus it was agreed to seek outside assistance to explore other options.

Darrell asked those states on the call today if they have any thoughts on or expectations of the possible use of finance options for procuring equipment. He noted it could be equipment acquisition beyond the intercity model.

Brent Thompson, Washington State DOT, responded that they were using funds received from the ARRA program for equipment purchase, and do not have other options in mind at this point.

David Ewing raised the possibility of exploring the dual mode locomotive market. He commented on the fact that the technical subcommittee will be producing a specification for Dual Modes in the near future and "in order to achieve critical mass of requests" for procuring dual modes it would be necessary to include states, commuter railroads, and, possibly, Amtrak in the equation as part of the market. David recommended that it would be worthwhile for the subcommittee to look at the dual mode and how it could achieve economies of scale.

Ultimately, it was agreed that David Ewing would own the action of developing a hypothetical case study of financing dual mode locomotives, and would provide a status report of his efforts on the next subcommittee call – August 28, 2013.

305 NGECE Finance Committee, July 31, 2013, page unnumbered

THE SACRAMENTO BEE sacbee.com

This story is taken from [Sacbee /](http://Sacbee/)

Sacramento judge tentatively says state can auction air quality credits in California

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California's cap-and-trade carbon auctions are within the authority of the state Air Resources Board under a 7-year-old law aimed at addressing global warming, a Sacramento judge has tentatively ruled.

Sacramento Superior Court Judge Timothy M. Frawley ruled Assembly Bill 32 gave the Air Resources Board discretion to decide whether to adopt a cap-and-trade program and design the method for distributing pollution allowances.

The program subjects hundreds of large-scale polluters to an annual cap on the amount of carbon they can emit, with the cap declining slightly each year. Companies exceeding the prescribed limit can either reduce their pollution or purchase additional emissions credits – from the state or other companies. A small percentage of the credits are being auctioned every three months.

“At the time AB 32 was enacted, both auctioning and free distribution were widely recognized methods of distributing allowances,” the judge wrote. “In delegating to (the air board) the authority to ‘design’ the ‘distribution of emissions allowances,’ the Legislature delegated to (the board) the choice of distribution methods.”

Frawley stopped short of deciding whether the estimated multibillion-dollar program constitutes an illegal tax. The judge heard arguments Wednesday from attorneys for the Pacific Legal Foundation and the California Chamber of Commerce, which filed similar lawsuits earlier this year and last fall as the carbon program was kicking into gear.

The lawsuit plaintiffs – various businesses and trade associations – acknowledge that the Legislature authorized the air board to adopt a cap-and-trade program, but they contend that lawmakers never intended to allow the board to raise billions of dollars by auctioning off greenhouse gas allowances.

“That was one of the major aspects of our lawsuits – that CARB did not have the authority,” PLF staff attorney Ted Hadzi-Antich said outside the courthouse. “We are hopeful that the final ruling will be different, but it’s difficult to guess what it’s going to say.”

Attorneys for the organizations spent much of the hearing making the case that the current program is unconstitutional because it was not passed by at least two-thirds of the Legislature – as required by Proposition 13.

Hadzi-Antich, in detailing the case of Woodland-based Morning Star Co., a tomato-processing facility that emits carbon dioxide, said there wasn’t a viable trading market last fall.

“The only choice that Morning Star had was to go and bid at the auctions,” Hadzi-Antich said.

He questioned what the company received in return. “This is not an asset of substantial value.”

Attorneys for the state and environmental groups contended the program doesn’t amount to a tax and was not enacted for the purpose of raising money for the state. Auction participants are walking away with some- thing of value, David Clegern, a climate change spokesman for the Air Resources Board, said at the courthouse.

“The people who get them, if they reduce their emissions enough, they have the ability to sell or trade these things,” Clegern said. “There is value there.”

The auctions also don’t call for mandatory participation, he said. Companies that reduce their emissions would not have to buy anything.

“(This gives) them the ability to pace their emission reductions at a marginal cost so over the eight years of the program they could build a business plan that includes this – like it would any other cost,” he said. “That’s why these auctions are held.”

Officials from the attorney general’s office said they expect a final ruling within 90 days.

Call Christopher Cadelago, Bee Capitol Bureau, (916) 326-5538. Follow him on Twitter @ccadelago.

Sent on behalf of the FRA Administrator Joseph C. Szabo:

Friends,

The winners of [TIGER 2013](#) grants were announced last week, and rail was again a big winner. Of the \$474 million in funding [awarded to 52 projects](#) in 37 states, \$146 million – roughly 30 percent of all funding – went to rail projects. Through five rounds now, TIGER – which stands for Transportation Investment Generating Economic Recovery – has invested \$808 million in rail projects in 48 states.

TIGER catalyzes economic growth, creating good-paying jobs while building a stronger transportation system for future generations. These are innovative, top-priority transportation projects that state, city, and community leaders deem essential.

But what we're able to invest is just a drop in the bucket compared to the demand. For this round of TIGER, DOT received more than 500 applications requesting *20 times the funding available*.

Last week, at [announcement events](#) for freight rail projects in Vermont and New Hampshire, I saw firsthand the commitment of state, city, and community leaders to doing what it takes to upgrade and enhance the safety of their freight rail systems. And it's important to note that, for the 52 projects funded through TIGER, DOT's grantees committed \$1.8 billion in overall project costs.

This speaks to the fact that, to our partners, these projects aren't luxuries, but absolute necessities. And to us, the projects moving ahead and those left on the planning table exemplify the need to make bold investments in transportation, and also to provide a dedicated, predictable source of federal rail funding.

You can see the full list of TIGER 2013 projects [here](#), and we'll also do daily posts about them on our [Facebook](#) page.

Best,

Joe

September 11, 2013