
To: SGIP BSPWG – Ungerer, et. al.

Thank you for the opportunity to review this latest revision of the SGIP 2.0 business plan. Additionally, the members of NEMA would like to thank the SGIP for the opportunity to listen-in on the conference call that took place on Friday, June 15, 2012.

Although we see progress since the last review, our concern continues to be the budget. The current plan comes in at $5.3 million, which is well above the $1.5 million originally discussed with the SGFAC. It is NEMA’s intent to limit the cost of this operation, yet this document appears to have the effect of driving the cost up. For NEMA, this is unacceptable. The SGIP should be looking for ways to limit the cost. An example of this is the Technical Champion program, which is essentially the biggest cost in the business plan --- and one that NEMA does not support.

The business plan appears to focus on fund raising activities. The purpose of the SGIP is not as a fund raising organization.

In a couple of areas, this business plan goes out of its way to incorporate NIST leadership; examples being the Cybersecurity and Testing and Certification committees. This is an "unnatural" act for an industry led organization. Basically, NIST is only a participant in the new organization. They would need to be chosen for a leadership position --- just like any other member.

The SGIP talks about global harmonization of standards, but doesn’t discuss how they will implement it. It appears to be a priority, but there is no plan.

We have several concerns with the document provided.

1. Repeatedly, it is stated that the objective is to keep a number of things “basically the same as SGIP 1.0”, and we think, in principle, that we would not disagree substantially with that in many respects. This includes the relationship between NIST and the SGIP, the mission, and the structure of the overall operation (balance, consensus, transparency, and the like). Likewise, there are several statements elsewhere that say “this will remain essentially unchanged.” In terms of an operating philosophy, NEMA would endorse this. However, we also feel that it is important for the SGIP
mission statement to articulate the intent to support NIST’s responsibilities under EISA 2007.

2. On the legal structure, we have some concerns that begin in paragraph (ii)(2) on page 15, where it is mentioned that NIST felt that if the organization was a 501(c)(6) entity, it would leave the door open for the SGIP to lobby, and this was not a good use of resources nor was it the intent. Alternately it is suggested that the group be incorporated as a 501(c)(3) organization --- a charitable, research, or educational organization – to deal with this perceived “problem,” because the law does not allow them to lobby.

Our interpretation is that this is a legal misstatement. A 501(c)(3) can lobby but may be constrained in terms of the level of lobbying they can do. NEMA’s suggestion is that the SGIP be organized as a 501(c)(4), and not a 501(c)(6). The former is known in the Internal Revenue Code as a “social welfare organization” and the definition of that group is that they are charged with primarily promoting the general welfare, the common good, civic betterments --- which seems to fit with the SGIP, better than a 501(c)(6) or a 501(c)(3). In that sense, a 501(c)(4) is a bit like a charity, but like a 501(c)(6), they can draft legislation and promote it.

No tax exempt status completely denies an entity the ability to lobby. A statement in the corporate charter filed with the State of Delaware is the only mechanism that would deny the SGIP the ability lobby. There has to be some reason beyond the ability to lobby to decide on a 501(c)(3) status. The reason for not preferring a 501(c)(3) is because the legal and accounting obligations create higher administrative/overhead costs. That is mentioned in paragraph (ii)(2) on page 15. NEMA suggests that this can be avoided with a 501(c)(4) organization whose corporate charter denies the entity the ability to lobby. The other reason for picking a 501(c)(4) is that a (c)(6) is a business league under the Internal Revenue Code, and the “optics” on this organization being characterized as a social welfare organization under 501(c)(4) rather than a business league are probably better.

3. A clarification is necessary for the use of the term “ex officio.” By definition it means that the person has a status in an entity (seat on the Board, in this case) by virtue of his office. Some questions need to be answered, such as: What is the current practice? Do they have votes? Or, are they just observers? The by-laws would ultimately spell that out. It appears that under the proposed business plan that NIST would have 2 seats out of 32 seats on the Board --- one by virtue of their chairmanship on the Smart Grid Cyber Security Committee and one by virtue of an officer of NIST (ex officio). DOE would also have a seat.
The big uncertainty is the expense/revenue scenario. NIST says it expects to make a financial contribution, but won’t know what it is until its 2013 budget is set. Given the current political climate and the status of federal budgets, that may not happen until several months into the new year. Later it is speculated that government funding might range from $500,000 to $1.5 million in 2013, but it should not be counted on for early FY 2013 expenses.

The plan also envisions membership dues from $2m - $3m. The former level of these two is in line with the instructions provided to the SGFAC by NIST, but the SGIP is saying it could be as much as 50% higher reaching $3m. This raises a concern about the money that would be raised from “sponsorships.” The presence of “sponsor” money implies that it could come from some of the same companies that are directly or indirectly paying the membership dues. If that is the case, those companies could hold up to $3m - $5m in financial indemnity for the SGIP, thus putting them in a position of having an undue influence on its proceedings.

The grants money from foundations is a bit speculative. We see that David Milenthal, a marketing services specialist (http://www.connectivityweek.com/2012/speaker_9320) is either being paid or volunteering for fundraising communications (pages 12-13) --- communicating the value proposition --- to assist in the membership fundraising. Presumably this same messaging will be used for grants and sponsorships.

Concerns over the 2013 budget include:

a. Overhead: $1.45m. NEMA’s fear when we first started contemplating the conversion to the private sector is that overhead would run amok. One key assessment by this group is the “level of estimated effort relative to 2012,” which is categorized as “same,” “less,” and “more.” Instead of “effort,” it appears to be more accurate to say “financial burden.” Some of the numbers generating concern include:
   i. $105,000 for board of director’s activities.
   ii. $510,500 for operations activities
   iii. $350,000 for management salaries
   iv. $500,000 for membership services --- including marketing and promotion (read Mr Milenthal)
   v. $75,000 for “event management”

b. In terms of “program management,” our understanding is that the bulk of this money is paid to the outside contractor at $3.69m. The indication here is that either “less” or the “same” level of effort (e.g.
financial burden) is contemplated, and that the contractor will see less money than it did under its NIST contract. Our understanding is that the contractor earned more than $3.7m in 2011 and 2012. The SGIP may think that they have shaved this cost, when in fact, the level of effort would indicate they have not.

5. Two lingering questions:

a. The message of this document is that the SGIP has important work to conclude and they need the resources (staff, contractor, and money) to keep this train moving rapidly. In principle that sounds fine, but we do not see a statement about what they expect to accomplish by the end of FY 2013. The “positioning statement” on pages 12-13 contains no specifics, just platitudes. The “value statement” has to be more than “the SGIP is the organization that everyone looks to for developing the modern Grid.” Someone in the proposed SGIP leadership needs to clarify what will likely be accomplished. Those goals will determine whether this has to be a $5m project or a $2m project, or something in between. There is no transparency on this point in the business plan.

b. There is no projection beyond 2013. NEMA and its members, as investors, are going to want to know what will happen after the first year. We are reluctant to consider a business plan that has less than a five year window for its operational objectives and expenses.

Some specific concerns about the document text:
• Item (V) on page 1. Who is the “independent third party,” that will construct a prioritized budget? NEMA is very concerned about the expense in the plan and wants to know how the SGIP will exercise cost control.
• Item (1) on page 3. The “third and final phase” of the NIST plan has already been implemented. The SGIP has released its IPRM and the Testing and Certification authorities are already working on test plans.
The business plan makes it sound as if this has not yet been accomplished.

- Item (1)(c) on page 6. As stated previously, there is no reason to force NIST staff into the position of the Chair of the Cybersecurity committee and the Vice Chair of the Testing and Certification committee.
- Item (iii)(1)(d)(ii) and (iii) on page 9. Same as the previous comment.
- Item (d)(i)(1) on page 10. In terms of openness, we need to be very careful about the proceedings of the audit and executive committees. This is where the sensitive business information and future plans for the organization will be discussed. Promising full and open meetings and public disclosure of the minutes could stifle what would need to be an honest and often brutal conversation. This type of information should be saved for the full board of directors once fully coordinated.
- Item (3) on the top of page 11. In terms of the consensus process, you need to specifically state that “consensus does not mean unanimity.” In resolving disagreements, who will initiate the vote to reach “a timely decision?” As written, this opens the door for exploitation. This idea either needs to be eliminated or spelled out in excruciating detail.
- Item (4) on page 11. The harmonization process appears to state that the SGIP 2.0 will attempt to adjudicate which SDO will write a standard.
- Item (1) on the top of page 12. The SGIP is on dangerous ground by attempting to implement “balanced voting.” The SGIP should be extremely cautious about implementing any recommendations that come out of the Tiger Team report.
- Item (2) on page 12. The business plan needs to call out the consensus procedure or specifically cite it in a reference. The way it is written is not well defined.
- Item (e) on page 12. There is no need to identify individual contributors from working groups such as David Milenthal, or any others participating in the SGIP process.
- Item (e)(i) on page 13. First bullet --- Is this true that the SGIP is the central organization that governments look to? This seems to be giving them “oversight” responsibility. Is this necessary?
- Item (iii)(1) on page 15. Suggested revisions to the Charter need to take place sooner rather than later. The operational concepts expressed in the Charter and By-laws will be an important factor in many companies’ decision whether to support the SGIP.
- Item (1) on page 16. Stating that the list of functional areas “must” be resourced leaves absolutely no operating room to adjust the budget based on a shortfall of member contributions. NEMA will not support Technical Champions nor the Public Relations, Communications, and Education roles that the business plan states “must be resourced.”
- Item (2) on top of page 16. The SGIP needs to be careful about any direct hires. With no dedicated office, it’s likely that a set of employees would exist in different geographic areas. There is a great deal of overhead burden associated with this. On a related note, do not discard the idea of
total outsourcing as expressed in item (ii)(1), “alternatives considered but not recommended.”

- Item (3) on page 17. NEMA is totally against an outsourced management company. The intent is to start a “not for profit.”
- Item (g), Governance Structure on page 18. For members of the board of directors and its committees, in all cases, you need to consider term limits or other factors that would be important to controlling the mixture of representatives.
- Item (b) on page 18. The board should be kept to board activities as described in Roberts Rules of Order. The board handles policy setting and the rest should be left to the executive director.
- Item (iii)(b) on page 20. It will be extremely expensive to host an open meeting for each stakeholder category. This expense seems to be seriously understated in the proposed budget.
- Item (3) on page 20. Today we operate without a technical committee. So why should we create a new one?
- Item (5)(d) on page 21. The nominating and governance committee needs to own the maintenance and updates of the SGIP 2.0 Charter and By-laws.
- Item (iii)(1) on page 23. Again, we are concerned about the implementation of “balanced voting.”
- Item (iii)(1) on page 26. This entire paragraph makes no sense. What is it trying to convey as an item for the development?
- Item (4) on top of page 27. Existing SDOs use their volunteer resources for technical champions on a daily basis. This is a successful model that has worked in the industry for decades. Continuing to try and promote a technical approach seems costly and unnecessary.
- Item (ii)(1) on page 27. The idea of proactively identifying linkage between SDOs and the SGIP cannot be discarded. This is necessary if there are no technical champions.
- Item (j) on page 27. Mapping the responsibilities of SDOs does not fit within the role of the SGIP. The industry will determine who is in the best position to write standards.
- Item (1) top of page 29. We agreed that individual budget items need to be prioritized so that SGIP leadership can easily match revenue levels with expenses.
- Item (l) top of 29, Revenue Opportunities. We would like to see some rigor associated with the revenue categories and the expected membership dues that would be received from those categories.
- Item (4)(c) on page 33. A breakdown needs to be provided to differentiate the benefits for each level of sponsorship, i.e., why would some pay $50k per quarter as opposed to $10k?
- Item (a) on top of page 34. Eliminate the notion of “primary” and “secondary” for grant money sources.
- Item (7)(a) on page 35. Oversight and direction of the network of ITCAs is not a role for the SGIP. The entire paragraph about a “business model” is
out of scope and should be deleted. We don’t want this testing thing to get out of hand due to increases in costs. There are plenty of processes already in place.

Thank you for giving us this opportunity to comment. We look forward to the next iteration of the SGIP plan.

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