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Biden's Big Bet on Electric Vehicles: Will Americans Buy in?

By Amanda Shafer Berman

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President Biden's infrastructure plan is more than roads and bridges—it's funding to accelerate the transition from gas to electric vehicles. Crowell & Moring partner Amanda Shafer Berman explains that achieving Biden's climate goals will require not only funding for a comprehensive, nationwide network of charging stations and consumer incentives as provided for in the bill, but also federal action on vehicle emissions and fuel efficiency standards.

The American Jobs Plan is not your everyday infrastructure bill. In addition to investing in traditional roads-and-bridges projects, President Biden audaciously seeks to inject major federal funding into green infrastructure—including to power up the transition to electric vehicles (EVs).

Specifics of the plan include investing \$174 billion in EVs with funding to create a national network of 500,000 charging stations by 2030; replacing the federal fleet with EVs, as well as 50,000 diesel transit vehicles and 10% of school buses; and offering rebates and tax incentives to EV consumers.

This is big stuff. While Tesla may be a household name, right now EVs still represent less than 2% of U.S. new car sales. Global adoption rates run only slightly higher; EVs represented only 2.5% of 2019 light vehicle sales.

An EV in Every Garage

Biden's vision of an EV in every garage isn't pie in the sky though. The transition from gas to EVs, while in early days, is accelerating. There are slated to be more than a dozen new pure electric offerings on the U.S. market by the end of 2021, including SUVs and trucks, and they are coming online at a variety of price levels. That may aid in combating the public perception of EVs as luxury items.

And it is increasingly hard to dismiss EVs as a niche product after GM's recent commitment to an "all electric" future, with the goal of 30 new EV offerings by 2025. Other car makers, including Volvo and Ford, have made similar commitments. While many of the big brands currently have only one or two EVs for sale in the U.S., that is about to change.

But to get more middle-income, middle-America car buyers to look seriously at EVs as an option, there has to be a comprehensive, nationwide network of charging stations. Americans need to know that they will be able to power up wherever they may roam. That's not the case right now in large swaths of the country, and that's one of the key places the infrastructure bill can make a difference.

Carrots and Sticks

The bill also aims to drive consumer demand through financial incentives. Right now, the federal tax credit for EV purchases phases out once a retailer has sold 200,000 EVs—a threshold GM and Tesla hit years ago. The infrastructure bill would put those dollars back on the table.

These are carrots for EV manufacturers and consumers—but they will likely soon be reinforced by the stick of more stringent federal fuel efficiency standards. Regulations issued during the Obama administration would have required average fuel efficiency of 54 mpg by 2026 for passenger cars and light trucks, but the Trump administration's revised that downward to 40 mpg.

The Trump administration's Safer Affordable Fuel-Efficient (SAFE) Vehicles rule is under review and there is little doubt that the Biden administration will replace it with more stringent standards, forcing manufacturers to improve fleet-wide performance over the next few years—which they can do by increasing EV offerings.

The Biden administration is also likely to reinstate the California waiver. Under Section 209 of the Clean Air Act, California may obtain a waiver that allows it to set more stringent motor vehicle emission standards than the federal government if it needs to meet compelling and extraordinary circumstances (for example, unique vulnerability to climate change impacts). Other states can then choose to adopt California's standards.

The Trump administration withdrew the federal waiver for California's GHG emissions standards, but the Biden Environmental Protection Agency will likely reinstate it. That would put California back in the driver's seat in regard to fuel efficiency standards, forcing manufacturers to get even more EVs into consumer hands to meet both state and federal requirements.

The Challenge Ahead

Each of these mechanisms for reducing vehicle greenhouse gas (GHG) emissions presents big challenges. Biden will have to get the support of nearly every Democrat in Congress to pass the infrastructure bill, as so far there is little Republican support. And even if the bill's "carrots" for EV manufacturers and consumers become a reality, the "stick" of more stringent federal or state fuel efficiency standards might not materialize.

A new federal emissions rule, or a California waiver, is certain to be challenged, and could end up before the U.S. Supreme Court, which is skeptical of aggressive environmental regulation. Some justices have voiced doubts as to whether the EPA should address climate change through regulation (whether aimed at vehicles or power plants) without an explicit mandate from Congress.

The Obama administration's motor vehicle CO₂ standards drew less fire than other GHG regulations, and they were not taken up by the Supreme Court. While the court has since tilted further to the right, fuel efficiency standards may still be the most judicially palatable of the GHG regulations coming down the turnpike.

To effect near-term, but long-lasting change in regard to what Americans drive—and the resulting GHG emissions—Biden must win both the immediate fight over the infrastructure bill, and the coming fight over motor vehicle fuel efficiency standards.

To succeed in one arena, but not the other, would put the brakes on the transition to an EV future. But if Biden builds EV infrastructure and tightens fuel efficiency standards, and manufacturers then build more EVs, car buyers just might come along for the ride.

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