

PENNSYLVANIA'S GROWING ELECTRIC VEHICLE CHARGING NETWORK: WHAT'S ALL THE BUZZ ABOUT NEVI PLANS?

Date: 20 September 2022

U.S. Energy, Infrastructure, and Resources Alert

By: Thomas R. DeCesar, Tad J. Macfarlan, Pierce Richardson, Nathan C. Howe, Brianna K. Edwards, Buck B. Endemann

With electric vehicles (EVs) on the rise, recent federal legislative and policy initiatives have prompted states to develop related infrastructure plans. These plans will provide for the greater connectivity required to support the future of EV transportation. As state plans are approved and implemented, new legal issues will likely develop.

On 15 November 2021, President Biden signed the Bipartisan Infrastructure Law (BIL), which directs funding to state and local governments for transportation improvement programs, including developing and expanding EV infrastructure. Under the BIL, each state was required to submit a National Electric Vehicle Infrastructure (NEVI) plan to the U.S. Department of Transportation by 1 August 2022.

The U.S. Department of Transportation and the U.S. Department of Energy announced recently that all 50 states, the District of Columbia, and Puerto Rico submitted their EV infrastructure deployment plans.¹ On 14 September 2022, the Federal Highway Administration (FHWA) announced the approval of Pennsylvania's NEVI Plan. To date, more than two-thirds of state plans have been approved. This alert discusses the Pennsylvania plan in depth, as an example of how states are tackling these new funding opportunities.

Pennsylvania submitted its plan² for consideration on 21 July 2022 (NEVI Plan). Pennsylvania is expected to receive US\$171.5 million in NEVI funds over the next five years, with an additional US\$2.5 billion in grant funding available for charging and fueling infrastructure. Pennsylvania's NEVI Plan has identified six goals for the Commonwealth's NEVI Electrification Program:

- Construct a consistent, robust charging network to enhance availability when and where people need to charge;
- Fund infrastructure that is safe and convenient for travelers;
- Ensure EV infrastructure funding is distributed and applied in an equitable manner and provides benefits to all populations including underserved and rural communities;
- Complement the NEVI formula program with proper training and diversity of the workforce to support economic growth, equity, and safety;
- Develop a charging network to support freight and goods movement throughout the Commonwealth; and
- Provide environmental benefits that can be shared by all of Pennsylvania's communities.

These six goals will be the focus areas for the US\$25.4 million of NEVI funding that Pennsylvania will receive during the 2022-2023 fiscal year.

Pennsylvania's NEVI Plan builds on the groundwork laid by the Pennsylvania Department of Transportation's (PennDOT) EV Mobility 5-Year Plan (Mobility Plan),³ which outlines several EV initiatives. Currently, Pennsylvania hosts more than 2,700 public EV chargers installed at over 1,100 locations throughout the Commonwealth.⁴ The Mobility Plan supports the installation of at least 2,000 new EV charging ports at 800 statewide sites by 2028. PennDOT estimates that this investment will cost between US\$250 million and US\$500 million to implement, depending on the mix of charge types employed. In addition to BIL funding, PennDOT hopes to use other funding mechanisms across the state to meet this goal.

According to its Mobility Plan, PennDOT will prioritize upgrading all interstates to alternative fuel corridors (AFCs) as defined in the FHWA guidance.⁵ PennDOT has identified both primary and secondary priorities for EV charging installation based on the travel needs of Pennsylvanians. The primary EV charging site targets include interstate and long-distance travel routes, major high traffic regional routes, and destination travel routes (such as state parks). PennDOT also plans to target emergency travel, commuter travel, and freight travel routes for EV charging improvements.

According to the FHWA, Pennsylvania has over 120,000 miles of public roads, ranking it 11th among states in the country.⁶ PennDOT hopes to install at least one charging site every 20 miles or less along interstate corridors throughout Pennsylvania, aiming to exceed the national AFC standards, which currently require a charging site every 50 miles or less. Specific site selection and the amount of charging stations will be based on a number of criteria, including Pennsylvania's jobs, population, traffic, and equity considerations.

In response to the signing of the BIL, U.S. Transportation Secretary Pete Buttigieg explained, "The investments in the President's Bipartisan Infrastructure Law for a national EV charging network are an important step toward ensuring that EVs aren't a luxury item and that everyone in America can benefit from clean transportation."⁷ Secretary Buttigieg also predicted that expanding EV infrastructure would greatly benefit those in rural communities, who often experience much longer and more costly commutes in comparison to workers in urban or suburban settings. Given Pennsylvania's diverse geography and demographics, PennDOT is seizing on the opportunity to promote EV connectivity throughout all corners of the Commonwealth.

PennDOT projections indicate that by 2028 as many as 1 million EVs will be on the road in Pennsylvania.⁸ To meet this growing demand, Pennsylvania will need around 50,000 non-home chargers by 2028, a need that will likely be met through a mix of public and private installations. While PennDOT's goal of installing 2,000 EV charging ports by 2028 is based upon the currently projected increase in EVs in the Commonwealth, PennDOT acknowledges that in the future, it will consider "more aggressive" installation strategies beyond those detailed in its Mobility Plan.

The various state plans submitted to the U.S. Department of Transportation are being reviewed by the FHWA and the Joint Office of Energy and Transportation, an office created under the BIL to facilitate cooperation between the U.S. Departments of Transportation and Energy,⁹ with approvals expected by 30 September 2022. Following approval, state departments of transportation will be able to deploy EV charging infrastructure through the use of NEVI Formula Program funds. In Pennsylvania, NEVI funding and administration will be managed by PennDOT, with its EV infrastructure expansion efforts expected to commence officially by as early as Fall 2022.

Implementing state NEVI plans will potentially raise many legal issues involving federal, state, and local governments. For example, the physical construction of EV charging stations will be subject to local land use ordinances and construction regulations. Additionally, to optimize EV charging site locations, eminent domain and the use of private property may be a concern. Public utilities will also be stakeholders in this process since charging capabilities are provided through existing state- and federally-regulated grids. Upgrades to grid facilities and site hosts' interconnection facilities may be required to support EV charging infrastructure and, moreover, the increase in publicly available charging facilities presents a new opportunity for load growth and managed charging programs.

Following the upcoming distribution of NEVI Formula Program funds, state departments of transportation will soon issue requests for proposal (RFPs) from potential vendors for EV charging installation. The FHWA recently proposed minimum standards and requirements for federally-funded EV charging infrastructure, creating guidelines for vendor compliance.¹⁰ Companies engaged in this work must consider BIL-related requirements and other federal and state regulations at all stages of the bidding and installation process. As state NEVI plans go into effect, additional legal and regulatory considerations will likely continue to emerge.

K&L Gates regularly advises clients on the various legal areas that will be implicated by the growing EV charging networks across the nation, including power, real estate, energy, environmental, transportation, and litigation (among others).

FOOTNOTES

¹ <https://highways.dot.gov/newsroom/biden-harris-administration-announces-all-50-states-dc-and-puerto-rico-have-submitted>.

² [https://www.penndot.pa.gov/ProjectAndPrograms/Planning/EVs/Documents/Final%20PA%20NEVI%20State%20Plan%20\(ver%207-21-2022\).pdf](https://www.penndot.pa.gov/ProjectAndPrograms/Planning/EVs/Documents/Final%20PA%20NEVI%20State%20Plan%20(ver%207-21-2022).pdf).

³ <https://www.penndot.pa.gov/ProjectAndPrograms/Planning/EVs/Documents/EVMobilityPlan.pdf>.

⁴ <https://www.pahouse.com/InTheNews/NewsRelease/?id=124994#:~:text=According%20to%20the%20Pa.,than%201%2C100%20locations%20in%20Pennsylvania>.

⁵ https://www.fhwa.dot.gov/environment/alternative_fuel_corridors/.

⁶ <https://www.fhwa.dot.gov/policyinformation/statistics.cfm>.

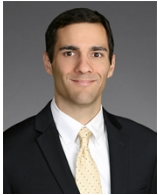
⁷ <https://www.transportation.gov/briefing-room/president-biden-us-department-transportation-releases-toolkit-help-rural-communities>.

⁸ <https://files.dep.state.pa.us/Energy/OfficeofPollutionPrevention/StateEnergyProgram/PAEVRoadmap.pdf>.

⁹ <https://driveelectric.gov/>.

¹⁰ <https://www.klgates.com/KL-Gates-The-Energizer-Volume-104-7-11-2022>.

KEY CONTACTS



THOMAS R. DECESAR
PARTNER

HARRISBURG
+1.717.231.4563
THOMAS.DECESAR@KLGATES.COM



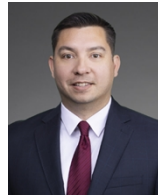
TAD J. MACFARLAN
PARTNER

HARRISBURG
+1.717.231.4513
TAD.MACFARLAN@KLGATES.COM



PIERCE RICHARDSON
PARTNER

PITTSBURGH
+1.412.355.6786
PIERCE.RICHARDSON@KLGATES.COM



NATHAN C. HOWE
PARTNER

NEWARK
+1.973.848.4133
NATHAN.HOWE@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.