

INTERIM JOINT COMMITTEE ON TRANSPORTATION

Minutes of the 2nd Meeting of the 2022 Interim

July 5, 2022

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Transportation was held on Tuesday, July 5, 2022, at 1:00 PM, in Room 149 of the Capitol Annex. Representative Ken Upchurch, Chair, called the meeting to order, and the secretary called the roll. The minutes from the June 2, 2022 meeting were approved.

Present were:

Members: Senator Jimmy Higdon, Co-Chair; Representative Ken Upchurch, Co-Chair; Senators Karen Berg, Johnnie Turner, Mike Wilson, Max Wise, and David Yates; Representatives Josh Branscum, Kevin D. Bratcher, Jonathan Dixon, Ken Fleming, David Hale, Samara Heavrin, Thomas Huff, Derek Lewis, Bobby McCool, Shawn McPherson, Charles Miller, Ruth Ann Palumbo, Tom Smith, Cherlynn Stevenson, Ashley Tackett Laferty, Walker Thomas, and Buddy Wheatley.

Guests: John Moore, Assistant State Highway Engineer for Project Development, Kentucky Transportation Cabinet (KYTC); Justin Harrod, Planning Lead, KYTC; Michael Kennedy, Director, Division for Air Quality, Energy and Environment Cabinet (EEC); Rachel Hamilton, Director, Louisville Metro Air Pollution Control District

LRC Staff: John Snyder, Dana Fugazzi, and Christina Williams

Recognition of Fallen Officers

Representative Ashley Tackett Laferty recognized Prestonsburg Police Captain Ralph Frasure, Prestonsburg Police Officer Jacob Chaffins, Floyd County Sheriff's Deputy William Petry, and Floyd County Sheriff's K9 Officer Drago who were killed while responding to an incident in Allen, Kentucky on June 30, 2022. A moment of silence was held for the fallen officers.

Kentucky's Electric Vehicle (EV) Infrastructure Deployment Plan

John Moore, Assistant State Highway Engineer for Project Development, KYTC, gave a brief update on Kentucky's EV Infrastructure Deployment Plan (EVIDP). The National Electric Vehicle Infrastructure (NEVI) Formula Funding Program's goal is to fund a convenient, reliable, affordable, and equitable national EV charging network. The initial focus is to have charging stations on interstates to support long distance travel. The NEVI program will provide Kentucky with \$69.5 million over five years, and \$10.3 million

in 2022. Upon approval, Fiscal Year (FY) 2022 and 2023 funding will be available. The Federal Highway Administration (FHWA) indicates approval by September 30, 2022. The program requires a 20 percent match with a potential for either state or private parties to provide the match. The funds will be used to build-out Alternative Fuel Corridors (AFCs) first, then other charging locations. Charging station requirements include direct current fast charging (DCFC) stations, also known as level three stations, spaced less than 50 miles apart, with each station having four ports at 150 kilowatts each. A statewide plan to secure funds must be approved by the joint office of the United States Department of Transportation (USDOT) and the United States Department of Energy (USDOE).

There are three types of EV charging stations. Level one charging stations, generally used in the home, are alternating current (AC) powered through a standard outlet and are the slowest charging. It takes approximately 48 to 72 hours to obtain enough charge to travel 250 miles with a level one charger. Level two charging stations are also AC powered but connect through a dryer outlet. They are also slow charging, and can take up to ten hours to charge enough to travel 250 miles. A level three charging station is powered by DCFC. It is the fastest charging and can charge enough to travel 250 miles in 30 minutes. The initial NEVI funding is exclusively for level three stations. Mr. Moore stated that proprietary stations such as Tesla Superchargers are not part of the NEVI formula program.

A map was shown to highlight Kentucky's priority EV corridors. The map indicated existing out-of-state EV Alternative Fuel Corridors, existing EV Alternative Fuel Corridors in Kentucky, NEVI build-out corridors (proposed AFC), and existing NEVI compliant DC fast current charge stations.

Phase one of the funding plan involves \$16.8 million in funding of the primary interstates. Phase two funds parkways and other freeways for \$20.4 million. Phase three funds other priority highways at a funding amount to be determined. Phase four funds community and park charges, also at an amount to be determined.

Most states, Kentucky included, are completing very high-level planning and not yet identifying any locations. Currently, the plan has evaluated the suitability and priority of interchanges, and promises the private sector will be involved during contracting to optimize the site selection. The factors considered for deployment of EVIDP are the distance to existing level three stations, which meet the NEVI standards, rural designation, equity designation, miles of corridor coverage, intersecting road traffic, presence of amenities, and power availability and reliability.

Kentucky, like the vast majority of states, does not plan to own or operate charging stations. The NEVI funds are intended to jumpstart the EV industry rather than build-out public EV infrastructure. With the critical role of private entities, Public-Private Partnerships (PPPs) may be the most effective manner to secure private sector investment.

The KYTC has initiated a process to select a method and is reaching out to the industry for feedback.

The EVIDP plan development requires getting the plan approved by the FHWA and coordination with FHWA and joint offices, with annual plan updates from 2023 onward. Implementation includes finalizing the contracting method which includes the consideration of bundling strategies, and coordination with the Finance and Administration Cabinet. The procurement phases involve the development and evaluation of procurement documents, and evaluating submittals and awarding contracts. Deployment phases involve monitoring construction, operations, and compliance. The plan meets the federal requirements and will be submitted before the August 1, 2022 deadline. Stakeholders include private companies, utility operators, government entities, nonprofit organizations, and manufacturers.

In response to a question asked by Chairman Upchurch, Mr. Moore stated there is not a concern on the effects the deployment plan will have on Kentucky's electrical grid. It would take a very rapid adoption of the plan, which is not forecasted for Kentucky, for there to be an issue.

In response to a question asked by Senator Jimmy Higdon, Mr. Moore stated in utilizing PPPs, the process of determining which company will acquire the charging stations has yet to be determined. He added they anticipate bundling the charging stations so there is a potential for multiple vendors to bid for those deployments.

Senator David Yates stated Kentucky wants to maintain its positive economic growth and economic hub standing, and encouraged speed of deployment and the use of the latest technology available.

Representative Ashley Tackett Laferty expressed concern over the lack of charging stations to be rolled out in Eastern Kentucky. Mr. Moore stated the intent was to rollout on interstates and parkways initially, and then to other priority roads, which more extensively touch eastern Kentucky.

Representative Samara Heavrin expressed her appreciation for the involvement of the private sector in the rollout of the program, as it alleviates some funds the government would have to provide. In response to a question asked by Representative Heavrin concerning the \$17.4 million match needed for the deployment plan, Mr. Moore stated the matching funds were anticipated to be provided by the private sector, which is unique to this program. Senator Higdon added that \$17 million was budgeted out of the General Fund for the federal match.

In response to a question asked by Representative Heavrin, Mr. Moore stated they have tried to overestimate the cost of the initial deployment to take inflation into

consideration. He added because there will be vendors competing for the project there will be pressure on competitive pricing.

In response to a question asked by Representative Heavrin, Mr. Moore stated it is not unreasonable to deploy a charging station every 50 miles, even in rural areas of Kentucky.

In response to a question asked by Senator Johnnie Turner, Mr. Moore stated all of the federal funds to be used for the deployment of the program are restricted to the designated Alternative Fuels Corridor, which currently in Kentucky consists of interstates and parkways. He added once those corridors are built out, then those funds can be extended to other priority highways, such as US 23. Mr. Moore added that a timeframe is unknown when US 23 will be considered for deployment. In response to a follow-up question by Senator Turner, Mr. Moore stated KY 80 is also a part of the Alternative Fuels Corridor network.

In response to a question asked by Representative Tom Smith, Mr. Moore stated he is unaware of a dollar figure that an average family would be pay for electric vehicle (EV) usage per year. Representative Smith expressed his concern that EV owners are not paying a fair share for the usage of Kentucky's roads, as revenue must come in to substitute for the loss of gas tax revenues. Senator Higdon added that the General Assembly had several discussions on what cost to implement on the use of EVs and that determination has been delayed until 2024 so that more discussion can occur. He added for now, the consensus that was reached was a \$120 user fee for EVs per year, and a \$60 user fee for hybrid vehicles. For the commercial charging stations, a three cent user fee is to be collected for each kilowatt hour, this does not include what the facility will charge for electricity. The Road Fund will receive that three cents per kilowatt hour.

Senator Karen Berg expressed her concern with the use of PPPs because of the possibility that the installation of charging stations will slow if profit margins begin to decrease.

Use of Reformulated Gasoline (RFG) in the Commonwealth

Michael Kennedy, Director, Division for Air Quality, EEC gave a brief presentation on the use of RFG in the Commonwealth. The mission for the Division for Air Quality is to protect human health and the environment by achieving and maintaining acceptable air quality through the operation of a comprehensive air monitoring network; creating effective partnerships with air pollution sources and the public; timely dissemination of accurate and useful information and data; judicious use of program resources; and maintenance of a reasonable and effective compliance program.

The federal Environmental Protection Agency (EPA) set national ambient air quality standards for six criteria of pollutants, one of those being ozone. Ozone is formed

through the combination of nitrogen oxides (NO_x), volatile organic compounds (VOC) and sunlight. Therefore there is not a particular source that emits ozone, but the sources that emit NO_x and VOC have a chemical reaction that produces ozone. Emissions from industrial facilities and electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of NO_x and VOC.

In 1990, the Clean Air Act was created to reduce ozone levels in certain areas of the country by decreasing the VOCs in vehicle emissions. The EPA required areas that had serious non-attainment to adopt RFG. Louisville and Northern Kentucky were declared moderate; therefore, those areas were not required to be in that program. But to take advantage of the reduction in VOC and NO_x, in September of 1993, Governor Jones requested to opt-in to the implementation of RFG in Kentucky. Reformulated gasoline served as an air pollution control measure beginning January 1, 1995 for Northern Kentucky and the Louisville area. Initially, the RFG program reduced NO_x and VOC by an estimated 17 percent.

There is a multi-step process to opt-out of the RFG program. The first step requires a petition for removal from the RFG program. Next a non-interference demonstration showing that the removal of RFG will not cause the area to exceed the ozone standard must be submitted to the EPA. The EPA must then approve the non-interference demonstration and the approval of the petition request. In April of 2017, EEC submitted a petition to EPA to opt-out of the RFG program for the Northern Kentucky and Cincinnati area. The EPA approval of the petition to remove the area from the federal RFG program was effective July 1, 2018. The current RFG areas include all of Jefferson County, portions of Bullitt County, and portions of Oldham County.

An annual cost comparison of the average gas prices in Kentucky in 2021 was presented for Cincinnati, Covington, Louisville, Lexington, Bowling Green, and Clarksville, Indiana. Also provided was an ozone season cost comparison for Cincinnati, Covington, Louisville, and Clarksville. The RFG summer ozone season, when more ozone is typically produced, is May 1 through September 15. More precautions to reduce ozone formation must be taken during the summer ozone season.

Since Kentucky opted-in to RFG, gasoline has improved over time because of federal policies such as the Energy Policy Act of 2005 which removed the oxygenate requirement of RFG, and mandated gasoline nationwide to contain increasing volumes of renewable fuels (i.e. ethanol). The EPA also adopted Mobile Source Air Toxics (MSAT) rule which applied a benzene content standard to all types of gasoline, including special blends. Since Kentucky opted in to RFG, vehicle emission controls have also significantly improved.

Rachel Hamilton, Director, Louisville Metro Air Pollution Control District, gave a brief update on ozone and how its impact is being dealt with in Louisville. Ms. Hamilton

stated that the Clean Air Act at its core is a public health strategy. She stated the health effects of ozone can include irritated throat, eyes, and mucus membranes, wheezing, shortness of breath, cough, asthma, chest pain during inhalation, and increased respiratory issues. Pulmonary inflammation and a greater risk of heart attack are also health effects of ozone.

The Clean Air Act is a continuous improvement program. The national ambient air quality standards are set and Congress requires the EPA to review the most recent health-based science. When that science says that there are still public health impacts, they require a lower standard and then leave it to state and local air pollution control agencies to develop the plan to reach that next level.

In 2018 Louisville and Northern Kentucky were designated as marginal non-attainment, which is the lowest level of ozone non-attainment. The new standard to be reached was 70 parts per billion. This goal was attempted to be reached using a three year design set from 2018 to 2020. Neither Louisville nor Northern Kentucky were able to make that demonstration a reality.

Because the deadline of August 2021 in that three year design was missed, it requires a proposal of bumping the areas up to moderate non-attainment. It allows for more stringent controls on emission sources such as electric generating utilities or industrial sources of NOx or VOCs. Once EPA finalizes the bump up to moderate non-attainment, which would be in 2023, if those areas continue to be in moderate non-attainment, then by 2026 there is a requirement for the areas to implement a vehicle emissions testing, or other programs.

However, even though these plans are in process, both areas are now currently meeting the standard of 70 parts per billion. Because that standard is now being met, Louisville and Northern Kentucky, through EEC, have prepared the request for redesignation. If the areas are redesignated to attainment, then planning and other requirements for moderate non-attainment cease. Currently the requests for redesignation have been noticed, and the EEC's public comment period ends on July 27, 2022, with the local public comment period ending July 29, 2022. After that, the proposal goes to EPA. Once it is approved, then those area would be designated in attainment.

In response to a question asked by Senator Higdon, Ms. Hamilton stated Kentucky has achieved the reductions that were expected under the initial Clean Power Plan which was passed by the Obama administration and then rescinded under the Affordable Clean Energy Rule. That milestone was achieved approximately nine years early. She added going forward, how the work implementation will proceed is yet to be seen.

Representative Kevin Bratcher expressed his displeasure over the RFG requirement, citing that the Louisville area has been bound by a decision made by a governor some 30 years ago.

In response to a question from Representative Bratcher, Ms. Hamilton said she did not think the recent Supreme Court ruling in the *West Virginia vs. EPA* case would have much effect on the situation in Louisville because that was a narrow decision dealing with the EPA's authority to regulate greenhouse gas emissions from an electric generation facility.

In response to a question from Representative Bratcher, Ms. Hamilton said the conversion of the Cane Run coal fired power plant to natural gas in 2015 was done in response to another EPA requirement to reduced mercury and sulfur dioxide, and under EPA rules, this reduction in pollutant could not be considered when looking at the ozone issue.

In response to a question from Representative Bratcher, Ms. Hamilton said that during the early parts of the COVID pandemic, there was a temporary decrease in pollution from mobile sources, but by the summer of 2020, numbers reverted almost all the way back to normal levels.

In response to a question from Representative Bratcher, Ms. Hamilton said that clean air standards are continuously updated by the EPA, in accordance with the requirements of the Clean Air Act. The standard was reduced from 72 to 70 parts per billion (PPB) in 2015, and the PEA decided not to change that number in 2020. She also emphasized that the standard does fluctuate.

In response to a question from Representative Bratcher, Mr. Kennedy said that RFG does cost approximately 5 to 7 cents per gallon more to produce, but the cost of gasoline at the pump is a result of many factors. Ms. Hamilton stated that they do track gas prices across the state and currently, gas is cheaper in the Louisville area than it is in Northern Kentucky, where they use standard gasoline.

In response to a question from Representative Bratcher, Ms. Hamilton said the Air Pollution Control Board was established by the General Assembly in 1952 under KRS Chapter 77. Its predecessor, the Smoke Commission, has been in existence since the 1940s. Ms. Hamilton stated that the Louisville area has essentially that same pollution sources as the entire state of Wyoming, including two major auto assembly plants, both a coal fired and natural gas electric generation facility, the Rubbertown chemical plants, and the state's largest wastewater treatment facility.

In response to a question asked by Representative Buddy Wheatley, Ms. Hamilton stated that the state of California and much of the southwest are required to use reformulated gas, so a large number of the population is required to use RFG gas.

In response to a question asked by Representative Wheatley, Ms. Hamilton stated with respect to ozone designation and how a non-attainment area may impact an area nearby, when a new standard is passed, there is an 18 month process to properly define the area. That process begins with what the state proposes based on understanding of the population, the sources of pollution, and the types of pollution. Ozone is unique in that it is not directly emitted from a stationary source. After the state proposal, a recommendation is made to the EPA. The EPA then responds with an agreement, or they go through their own process where they might reject a finding based on their analysis. A technical support document is then made where different factors are taken into account.

In response to a question asked by Representative Ken Fleming, Ms. Hamilton stated the current primary goal is to bring the area into attainment. If the area is not brought into attainment, and bumped up to moderate, those additional controls the Reasonably Achievable Control Technology (RACT) and Reasonably Achievable Control Measures (RACM) will include additional control for Kentucky utilities. Once attainment is reached, then an opportunity can be presented to evaluate removing RFG at that time.

In response to a question asked by Representative Fleming, Ms. Hamilton stated she will provide a copy of the EPA's Regulatory Impact Analysis for the 2015 Ozone Standard, where they evaluate public health standards. She stated there are several other publications that she could share as well.

Representative Thomas Huff read a statement from the Air Pollution Control District as reported by WLKY news that stated based off of the 2019, 2020, and 2021 air monitoring data, the Louisville area is now meeting the National Ambient Air Quality Standards. Ms. Hamilton stated the data has been obtained that shows the areas are now meeting the standards. Certifying the data for the ozone season from 2020 to 2021 was completed early in January of 2022. Because Louisville has the state's incore monitor, which is required to monitor ozone year-round, the full years' worth of ozone data must be certified. There are also other requirements under the Clean Air Act that must be met before preparation of the request for redesignation. Both Louisville and Northern Kentucky have prepared the request for redesignation. The public comment portion of the process is now underway. Once that is complete it will go to the EPA. Once approved by the EPA they will designate the area as attaining the standard.

Study Report

The June Report for the Interim Staff Study on Electric Vehicles and Transportation Funding was provided to members. In the 2022 regular session of the General Assembly, House Bill 8, Section 56 required staff to report to LRC monthly during the interim on

these topics for referral to the Interim Joint Committees on Appropriations and Revenue and Transportation. The study is being done over five months, and the study report provided the first ten states reviewed. Studies will be issued each month, with a compilation of all 50 states produced at the end of the interim.

This report was produced by the staff of the Appropriations and Revenue Committee, and was reviewed by the staff of the Transportation Committee prior to publication.

With no further business to come before the committee, Chairman Upchurch adjourned the meeting at 2:42 P.M.