United States Senate
WASHINGTON, DC 20510-0908

May 20, 2024

The Honorable Gene Dodaro
Comptroller General
Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Comptroller Dodaro:

We write with concerns that the Department of Energy (DOE) is incorrectly, and potentially illegally, setting the petroleum equivalency factor (PEF) for electric vehicles (EVs), which is used by the National Highway Traffic Safety Administration (NHTSA) to set the agency's directive for automakers' corporate average fuel economy (CAFE) standards. While the Environmental Protection Agency (EPA) fuel economy rating of EVs averages around 100 miles per gallon equivalent (MPGe), the PEF uses a fuel content factor (FCF) that rates one gallon-equivalent of electricity as 0.15 gallons of gasoline, creating a 6.67 multiplier under the CAFE taxonomy. This multiplier enables automakers to earn nearly seven times more credits per EV than their rated fuel economy would normally allow and generates a hidden subsidy that likely exceeds $10,000 per EV.

The PEF was created by the Alternative Motor Fuels Act of 1988 and expanded to include electric vehicles in 1992, but subsequent statutory revisions in 1994 removed electricity and specified that the FCF apply only to "liquid alternative fuels." Despite the clear language of the statute, both the removal of the specific reference to electricity and the use of the term "liquid alternative fuels," the DOE issued a rule in 2000 applying the 0.15 FCF (one divided by 0.15 equals a 6.67 multiplier) to electric vehicles. That multiplier has remained unchanged until the present day, and in March, the DOE extended it through 2026 with no significant phase out until the end of the decade.

Some simple math shows that the value of the CAFE credits likely far exceeds the $7,500 federal tax credit available to vehicle Original Equipment Manufacturers (OEMs). NHTSA previously published reports that disclosed these astonishing manipulations, but it discontinued their publication for vehicles after model year 2017 (MY2017). The 2017 report[1] showed that MY2017 fuel economy standards were approximately 35 mpg and Tesla's MY2017 fuel economy performance (with unlawful

[1] NHTSA Manufacturer Fuel Economy Performance Report
https://one.nhtsa.gov/cafe_pic/home/ldreports/manufacturerPerformance

multipliers) was 518.7 MPGe. Tesla sold 46,979 MY2017 vehicles in the U.S. and accumulated 22.7 million excess compliance credits on those vehicles. If the credits were worth the value of the 2017 CAFE penalty of $5.50 per 0.1 mpg shortfall, then Tesla's MY2017 credits were worth approximately $1.25 billion, or *$26,600 per EV*.

With the EPA and NHTSA establishing stringent greenhouse gas emissions standards and CAFE standards with the explicit goal of increasing EV adoption, automakers are planning massive investments in EVs, with supply chains that are primarily outside the U.S., including in countries hostile to the U.S. These federal standards and the improper application of the FCF to EVs is resulting in an improper transfer of billions of dollars every year from gasoline vehicle manufacturers and consumers to electric vehicle manufacturers and consumers. Despite this massive unlawful and hidden wealth transfer, gasoline and diesel car and truck consumers do not know that they have unwittingly been subsidizing the purchase of EVs and what the true cost of the subsidy is. The American people have a right to know what they are paying for.

In light of this information, we are requesting the Government Accountability Office conduct an investigation to answer the following questions.

- What is the DOE's justification for applying the FCF to electricity when statute clearly limits its application to *liquid* alternative fuels, and fails to reference its application to EVs? The new rule states that "a fuel content factor could potentially be justified under the four factors of section 32904" and then explains that justification. But the rule makes no reference to the specific requirement in section 32905 that the FCF apply only to liquid alternative fuels.
- What is the total volume of MPG credits awarded to EVs since the DOE and NHTSA began applying the PEF to EVs in 2000? How many credits would have been awarded to EVs without the FCF multiplier?
- What information does the federal government possess regarding the monetary value of the credits awarded to EVs since 2000?
- What information have automobile manufacturers disclosed, through SEC filings of actual or potentially material financial impacts to shareholders, that specify the value of CAFE credits sold, purchased or banked, for each model year and for each vehicle model? If any manufacturers disclose values for "regulatory credits", what credits are they referencing?
- Similarly, what information have automobile manufacturers disclosed through SEC filings of actual or potentially material financial impacts to shareholders, that specify the value of zero emission vehicle (ZEV) credits (created by California) and EPA GHG credits that have been sold, purchased or banked, for each model year and for each vehicle model?

- Do any auto manufacturers report the value of the CAFE, ZEV and GHG credits in different places on their balance sheets and in different parts of their financial disclosures? Do any auto manufacturers exchange or sell their credits for goods or services, such as discounts on auto parts so that the credits do not appear in financial disclosures as a distinct source of income or loss?
- Since 2000, what is the annual inflation-adjusted value of the penalty paid by automakers that fail to meet the CAFE standards? If that penalty is multiplied by the number of credits awarded to EVs each year, what would that estimate yield for the total value of credits given to EVs?

Despite mandates to purchase EVs and the massive amount of federal support for EV production, charging, and purchases, consumers are not buying EVs at a fast enough rate to match the production levels being dictated by the CAFE standards. As such, a replacement for this massive, hidden, and perhaps unlawful subsidy scheme and more will be needed to drive further EV adoption. Rather than propping up the EV market with unrealistic fuel economy standards and fake credits, the federal government should allow consumers to decide when and how to adopt EVs. We hope this information will help Congress realign these policies with reality and stop the use of fake math to force EV adoption.

Thank you for your prompt response to this inquiry and for the work you do every day to serve Congress and the American people.

Sincerely,

Rick Scott
United States Senator

Michael S. Lee
United States Senator

Roger Marshall, M.D.
United States Senator

Dan Sullivan
United States Senator

Pete Ricketts
United States Senate