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ELECTRIC VEHICLES

EV battery maker: Court ruling threatens Biden climate plan

David Iaconangelo and Timothy Cama, E&E News reporters • Published: Thursday, February 18, 2021



The logo of battery maker SK Innovation is seen in front of its headquarters in Seoul, South Korea, in this February 2017 photo. Kim Hong-Ji/Reuters/File Photo/Newscom

A major manufacturer of electric vehicle batteries is warning that a federal trade court's ruling this month could have a "serious adverse impact" on President Biden's climate goals, unless the president overrides the ruling.

SK Innovation Co. is on track to be the nation's third-largest battery producer, with 21,500 megawatt-hours of capacity either announced or under construction, according to data released yesterday in Bloomberg New Energy Finance's "Sustainable Energy in America Factbook."

It's behind only the Tesla Inc.-Panasonic Corp. partnership and LG Chem Ltd., which round out the triad expected to drive most of the growth in domestic supplies of EV batteries — an industry that the Biden administration wants to jump-start. And by 2025, SK Innovation's two planned battery facilities in Georgia could account for 17% of the country's capacity of EV batteries, according to BNEF analysts.

Last week, SK Innovation was banned from importing battery cells and modules for 10 years by the U.S. International Trade Commission, after LG Chem accused it of stealing trade secrets. The ruling established temporary grace periods during which SK Innovation can supply batteries for Volkswagen AG's and Ford Motor Co.'s forthcoming all-electric models ([Energywire](#), Feb. 11).

SK Innovation, in particular, is trying to get the Biden administration to intervene and overturn USITC's decision, fearing that it will effectively force it to abandon plans for a second, \$940 million addition to its in-development EV battery facility in Georgia.

Spokespeople for the company cited "serious concerns ... for the future of our EV-battery facility" there after the federal decision, adding in a statement that they believed the ruling "could have a serious adverse impact on President Biden's policies to combat climate change and expand the electrification of the US auto fleet in coming years."

"SK is urging presidential review and disapproval of the ITC decision, and will work closely with all stakeholders in the decision-making process," spokespeople wrote in an email to E&E News.

USITC gave little justification for its ruling in the Feb. 10 order, although a public version of its opinion is expected to be released in the coming months. Kim Jong-hyun, CEO of LG Energy Solution, an LG Chem subsidiary, praised the ruling, saying it was "protecting our innovations and significant economic investments in the United States."

The White House did not provide comment.

A settlement?

Some EV analysts also are raising concerns about what USITC's decision might mean for Biden's broad aims of accelerating EV adoption.

Eliminating SK Innovation's contribution to the U.S. battery chain would "complicate" but not "derail the country's EV market," wrote four BNEF analysts in a research note this week.

Biden's recently declared goal of converting the entire federal fleet to EVs, for example, "will likely require that SKI's U.S. manufacturing plants remain operational," they wrote.

To sidestep USITC's ruling, and the 10-year ban it entails, SK Innovation's options are twofold. Either the company can reach an out-of-court settlement with LG Chem, or Biden can veto the court's decision within 60 days of the ruling.

Only one veto of an USITC import exclusion has been issued this century, by former President Obama in 2013 in a dispute between Samsung and Apple Inc. over consumer electronics.

The president has made decarbonization of transportation "central to his climate objectives," and political pressure is likely to mount on him to preserve SK Innovation's two Georgia battery factories, the analysts wrote. And Volkswagen and Ford may also have trouble finding alternative domestic suppliers for their U.S.-produced electrics, despite their initial exemption from the import ban. Those exemptions last two and four years, respectively.

Volkswagen and Ford both say they hope the two companies can reach a settlement out of court.

"While we appreciate the ITC took into account our plans to bring the all-electric Ford F-150 to market mid-2022, a voluntary settlement between two auto suppliers based outside of the U.S. is ultimately in the best interest of manufacturers and workers operating right here," Ford spokesperson Jennifer Flake wrote in an email to E&E News.

Volkswagen's spokespeople, too, said the company had become "an unintended victim" in the dispute, adding that they would request that their exemption from the ban be extended from two years to at least four years.

SK Innovation and LG Chem are currently in talks over a settlement, according to reports from South Korean media this week. And Dave Callahan, co-counsel for LG Chem in the case, said that the company was open to reaching a settlement.

Callahan added that the company anticipated the opportunity to provide information to the Office of the U.S. Trade Representative as part of any presidential review of USITC's ruling. "We anticipate we'll participate in that process and explain that this case is like the overwhelming majority of cases in which the president does not exercise his right to veto."

The exemptions for Volkswagen and Ford gave both automakers the necessary protections, Callahan said. "It's SKI's obligation, now, to take care of ... the people who're going to build those batteries and the state of Georgia, which invested a lot of its money encouraging SKI to build their plant there."

New lobbyists

One lobbying firm retained in late January by SK Innovation, Chartwell Strategy Group, is squarely focused on the USITC ruling, according to a person familiar with the firm's Washington strategy.

That advocacy includes both pushing the Biden administration to act on the matter and working to get lawmakers to weigh in as well, particularly those representing Georgia.

"We look forward to having detailed discussions with Biden administration officials charged with reviewing the ITC's ruling and carrying out the President's policies related to electric vehicles and the environment," wrote SK Innovation's spokespeople.

Chartwell is just the latest piece of a multipronged strategy by SK Innovation to fight LG Chem. It has previously retained Covington & Burling LLP, mainly to conduct legal work and represent it in the USITC process, and has gotten help from former EPA Administrator and Obama climate czar Carol Browner for the USITC battle.

Communications firm Ridgley Walsh LLC, helmed by former Republican consultant Juleanna Glover, is handling public relations on the matter.

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