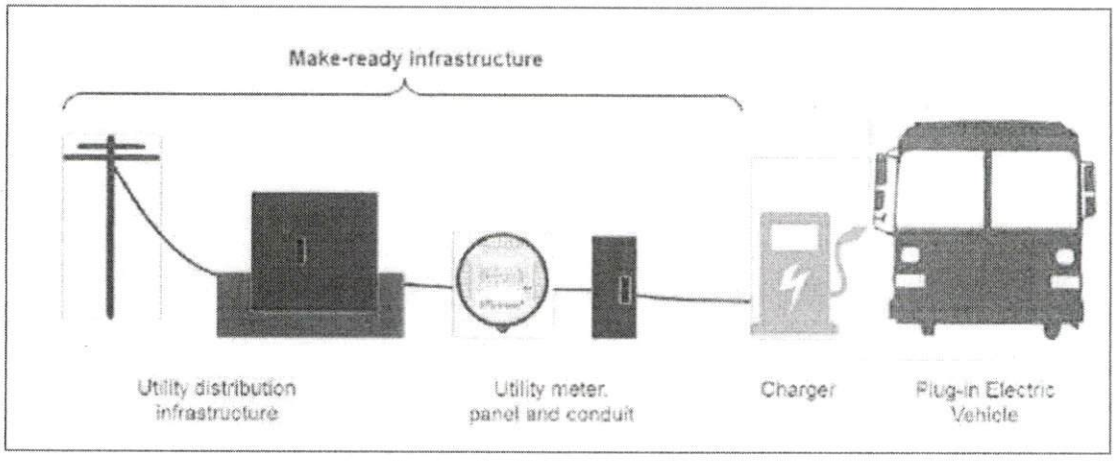
Figure #12: EV Charging Distribution Infrastructure



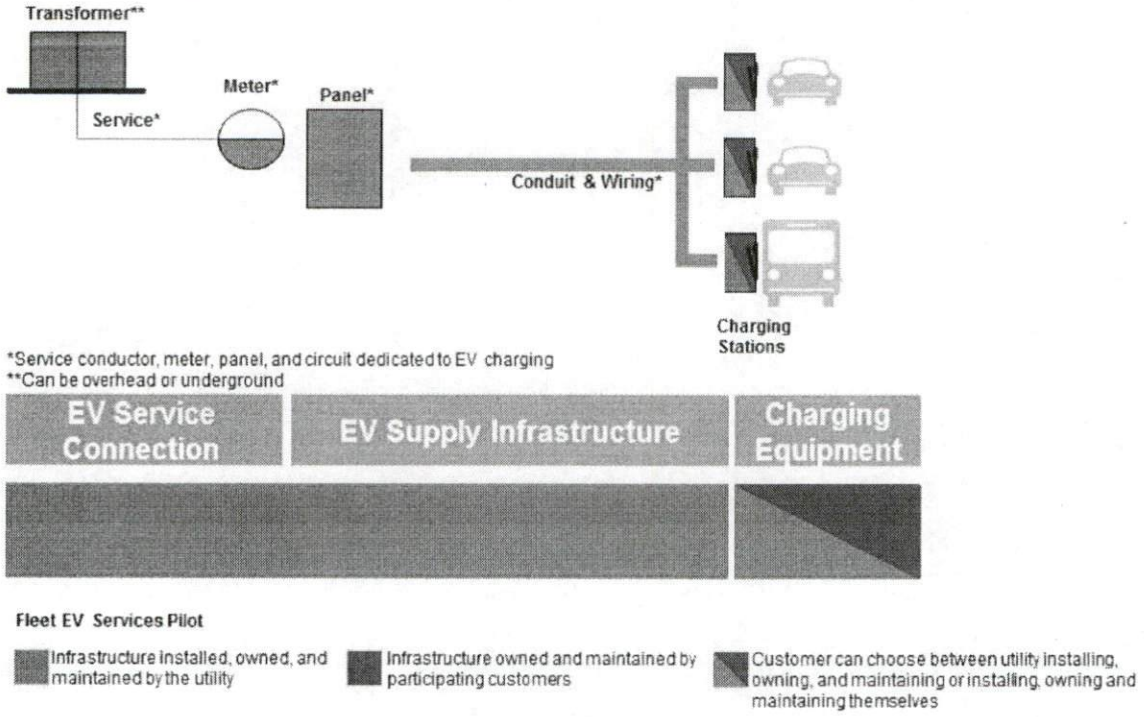
Source: Pacific Gas and Electric

We note, "Make-Ready" refers to the infrastructure depicted in the above diagram, regardless of who owns it. This distinction is important because a make-ready program can involve both utility ownership of make ready infrastructure, as well as utility incentives that offset the cost of the make ready infrastructure in which the site host retains ownership.

The Make-Ready Infrastructure approach limits a utility's investment to the equipment necessary to connect the EV charging infrastructure to the grid. Since this can often be a large part of project costs, some form of utility investment here can likely increase the pace and lower the costs of infrastructure investment that leads to fewer barriers for third-party charging station development.

Public Service describes its interpretation of Make-Ready Infrastructure in two parts: First, the EV service connection includes any needed transformer upgrades, service conductors, and new meter. The utility currently invests in these assets per existing line extension policies. The Company notes there may be a customer contribution to these costs as part of the extension policy. Second, the EV supply infrastructure consists of new service panels, conduit, and wiring up to the charger stub. Public Service states that it has not yet invested in these latter types of assets for EV infrastructure.

Figure #13: Public Service's Make-Ready Infrastructure Model



Source: Public Service

The Joint Participants argue that the single-biggest impediment to utility investment in Make-Ready Infrastructure in Colorado is the lack of regulatory certainty on allowable investment.

Current Law

Section 40-1-103.3 (2018), C.R.S., may place some limits on the utility ownership of EV charging infrastructure. The statute identifies three activities that are presumed to be unregulated: (1) utilizing distributed generation to generate electricity for use in alternative fuel charging; (2) "resell[ing]" electricity provided by a public utility for use in EVs; and (3) buying electricity stored in such vehicles for resale. That section goes on to state a public utility may do any of these three things as unregulated services that are not subsidized by the utility's regulated services.

There is little dispute that the Commission possesses the jurisdiction and discretion to evaluate any proposals regarding EV charging infrastructure owned by regulated public utilities, so long as they do not fall into one of the three categories specifically prohibited by statute. Such proposals may include, for example, authority to conduct pilots or programs for EV charging, or requests to invest in EV Make-Ready Infrastructure. If such a proposal is approved by the Commission, then § 40-1-103.3(6), C.R.S., requires that "[t]he regulated expenditures and

investments made by a public utility to accommodate alternative fuel vehicle charging and fueling facilities are equal in priority to all other infrastructure necessary to serve any customer of the public utility in its service territory, but are subordinate to the safety and reliability obligations of the utility."[46]

On October 11, 2018, Working Group participants including, the Natural Resources Defense Council, SWEEP, Sierra Club, and Western Resources Advocates (WRA) (supported by 20 additional entities),[47] submitted a Statement in Proceeding No. 17I-0692E. The full statement can be found in Attachment A. In the statement, the participants believe that § 40-1-103.3, C.R.S., indicates any other EV charging-related investments or activities not enumerated in the statutory text may be treated as part of the regulated side of the utility's business, provided they are consistent with other statutory provisions and regulatory standards.

The Statement further argues that § 40-1-103.3(6), C.R.S., implies that: (1) the investment in physical infrastructure should be treated similarly to all other investments in the distribution grid; and (2) investments in EV charging infrastructure should not come at the expense of other distribution grid investments the utility would otherwise be making. The statement argues the language applies only to "infrastructure" and should not be seen as limiting the utility's ability to undertake non-infrastructure EV charging programs such as rebates or incentives. The statement also urges the Commission to act quickly to leverage funds that are available pursuant to the VW Environmental Mitigation Trust, and recommends the Commission "invite utilities to submit Applications for EV Make-Ready Infrastructure, including cost-recovery from ratepayers where appropriate."

In its response, CEO/RAQC states that they agree with the Joint Respondents' conclusion that utility investment in, and cost-recovery of, Make-Ready Infrastructure is legally permissible. However, they interpret § 40-1-103.3(2), C.R.S., slightly differently than the Joint Participants, stating it affirmatively exempts certain services related to EV charging stations from being regulated as a public utility by the Commission. Such activities include generating electricity for use in alternative fuel vehicle charging facilities, reselling electricity supplied by a public utility, and buying electricity stored in electric EVs for resale. The primary purpose of § 40-1-103.3, C.R.S., was to allow non-public utilities to sell and buy electricity from charging stations.

CEO/RAQC clarifies that the statute also permits public utilities to participate in these listed activities; however, public utilities cannot charge for the associated costs of these activities in their regulated service rates. CEO/RAQC concludes that, although public utilities do not pay for the entire cost of infrastructure upgrades on the utility's side of the meter as a dedicated

[46] CEC notes that while the statutory language itself is clear, there is not consensus on its applicability.
[47] WRA Memorandum (Attachment A) filed July 29, 2018