September 23, 2022

SUBMITTED VIA E-DOCKET (REGULATIONS.GOV)

Richard Huggins Jr., Chief
Office of Resource Conservation and Recovery
Materials Recovery and Waste Management Division
Environmental Protection Agency
1200 Pennsylvania Avenue
Washington DC 20460

Subject: CPS Energy Comments and Responses to the Proposed Conditional Approval of Alternative Closure Deadline for the Calaveras Power Station (Proposed Decision)
Docket ID No. EPA-HQ-OLEM-2022-0333

Dear Mr. Huggins:

CPS Energy is in receipt of your July 12, 2022 communication requesting comments/responses to the Proposed Conditional Approval of Alternative Closure Deadline for the Calaveras Power Station (Proposed Decision). CPS Energy is pleased to submit the following comments/responses to the request.

Introduction

On November 30, 2020, CPS Energy submitted two alternative capacity infeasibility demonstrations (collectively referred to as the "Demonstration") to the Environmental Protection Agency (EPA), one for the SRH Pond and one for the Evaporation Pond, at the Calaveras Power Station in Bexar County, Texas. Based on the lack of available on-site capacity and the need to construct additional storage units, CPS Energy sought extensions pursuant to 40 Code of Federal Regulations (CFR) § 257.103(f)(1) to continue to receive CCR and non-CCR wastestreams through September 1, 2023 for the SRH Pond and through May 26, 2022 for the Evaporation Pond. Due to unavoidable construction delays, CPS Energy requested an updated alternative closure deadline of September 30, 2022, for the Evaporation Pond in its March 1, 2022 response to EPA's February 14, 2022 request for additional information. Based on EPA's statements in the Proposed Decision, CPS Energy understands that EPA considered the information conveyed March 1, 2022, and other information provided by CPS Energy in response to EPA review, as part of the Proposed Decision.

On January 11, 2022, EPA notified CPS Energy that the Demonstration was complete. On July 12, 2022, EPA released its Proposed Decision on CPS Energy's Demonstration. The Proposed Decision proposes to grant in part and deny in part CPS Energy's request for alternative closure deadlines, as follows:

First, EPA is proposing to conditionally approve the extension request to allow for continued placement of CCR and non-CCR wastestreams in the SRH Pond until September 30, 2023. EPA, however, proposes to condition its approval on CPS Energy's timely commitment to the conditions identified in the final

decision judged by EPA as necessary to satisfy the conditional approval. CPS Energy supports EPA's proposed approval of its request for the SRH Pond. While CPS Energy believes that its Demonstration supports an unconditional approval, and urges EPA to withdraw the conditions to its approval, CPS Energy intends to provide the requested commitment to EPA necessary to support the conditional approval, subject to review of the final decision and conditions contained therein.

Second, EPA is proposing to find that CPS Energy "failed to adequately explain the lack of available on-site alternative capacity for the Evaporation Pond wastestreams." CPS Energy objects to EPA's proposed finding that it failed to adequately support its request for an alternative closure deadline for the Evaporation Pond in its Demonstration and responses to EPA. Nevertheless, CPS Energy has provided additional information in this response to further support its request for an alternative closure deadline for the Evaporation Pond. The original information provided in the Demonstration, as supplemented by the additional information contained in these comments, fully demonstrates a lack of available on-site alternative capacity for the wastestreams managed in the Evaporation Pond. In this letter, CPS Energy is providing responses to only those proposals presented by the EPA in the Proposed Decision that warrant a comment or clarification. For review purposes, the EPA Proposals are presented below in italics followed by a corresponding CPS Energy response in regular text.

EPA Proposal 1

> *EPA is proposing to find that the Demonstration fails to support the conclusion that there is a lack of available on-site alternative disposal capacity for the Evaporation Pond (EP). Since CPS Energy is requesting an alternative compliance deadline for both the Evaporation and the SRH Ponds, it intends that both will continue to receive waste. But CPS Energy failed to discuss the reasons both ponds need to operate; for example, it could divert the industrial wastestreams from the Evaporation Pond to the SRH Pond. Diverting the industrial wastestreams would expedite the closure and the cease receipt of waste date for the Evaporation Pond. Additionally, it would only require one CCR surface impoundment to continue to operate under an alternative cease receipt of waste deadline.*

CPS Energy Response 1

> Diverting the industrial wastestreams from the Evaporation Pond (EP) to the SRH Pond is not a feasible option for the reasons discussed below, and CPS Energy needs to continue to use both ponds to maintain operations until alternative capacity for the EP is completed and operational.
>
> The primary operational function of the EP is to receive non-CCR flows (industrial wastestreams) by tanker truck for evaporation. The non-CCR industrial wastestreams are generated by CPS Energy's J.K. Spruce Plant and other CPS Energy power generation facilities. The EP does not receive any CCR wastestreams.
>
> The SRH Pond in contrast receives CCR and non-CCR flows from various sources within the J.K. Spruce Plant and all flows are co-mingled in the SRH Pond. TPDES Industrial Wastewater Permit WQ0001514000 specifies what flows may be routed to the SRH Pond and requires all wastewater discharged from the SRH Pond to be treated in a clarifier to reduce the total suspended solids (TSS). In lieu of discharge, the permit allows CPS Energy to recycle wastewater treated in the SRH Pond back to the J.K. Spruce Flue Gas Desulfurization (FGD) system.

CPS Energy evaluated whether the SRH Pond could manage the non-CCR wastestreams managed in the EP and concluded that it could not for two reasons. First, TPDES Industrial Wastewater Permit WQ0001514000 does not authorize these wastestreams to be placed in the SRH Pond and, second, the SRH Pond treatment systems are not physically able to treat them if CPS Energy could obtain authorization for them to be placed in the SRH Pond.

By way of further description, the large majority of the non-CCR wastestreams managed by the EP are metal cleaning wastes. These wastestreams average approximately 800,000 gallons annually and are typically generated during discrete maintenance events over a relatively short period of time. These wastestreams would require pretreatment to remove dissolved metals before they could be discharged or recycled; however, the SRH Pond is not equipped with the necessary pretreatment system. The existing clarifier is designed to reduce TSS using settling and clarification and is not designed to treat or remove dissolved metals. Moreover, the allowable discharges under the TPDES Industrial Wastewater Permit for the SRH Pond do not cover the types of wastestreams currently discharged into the EP. CPS Energy is not allowed, under any circumstances, to discharge metal cleaning wastewater or chemical cleaning wastewater from the SRH Pond, therefore, these wastewaters cannot be diverted to the SRH Pond. Even if a SRH Pond treatment system could physically treat the EP wastestreams, modification of the permit would take at least a year and likely longer, making this option impracticable given that alternative capacity for the EP wastestreams is expected to be completed before then.

EPA Proposal 2

EPA is proposing to find that there would be adverse impacts to the power plant if the CCR surface impoundments could not be used after April 11, 2021. EPA proposes to find that if Calaveras is unable to continue using the CCR surface impoundments, and if no other on or off-site alternative capacity is available, there would be adverse impacts on the ability to run the associated boilers such that a planned temporary outage would likely be required. As discussed in Section IV, EPA disagrees with CPS Energy's claims regarding the broader impact of such an outage.

CPS Energy Response 2

CPS Energy agrees that there would be adverse impacts to the power plant if the SRH Pond and/or the EP could not continue to receive wastestreams prior to the completion of construction of new on-site alternative capacity, and that there would specifically be adverse impacts on the ability to run the associated boilers such that a temporary outage would likely be required.

With respect to broader impacts of such an outage, however, the broader impacts of an outage were not addressed in the Demonstration package because this analysis was not required under 40 C.F.R. § 257.103. CPS Energy has now initiated conversations with Electric Reliability Council of Texas (ERCOT) to demonstrate the potential adverse impacts from an outage if the J.K. Spruce Plant were not able to continue operating. If EPA proceeds with its conditional approval, however, an unplanned outage would not be necessary. Accordingly, CPS Energy's comments related to the broader negative consequences of a denial of the Demonstration request, and ERCOT's determinations related to adverse impacts on grid reliability due to such outage, are separately provided in **CPS Energy Response 8** below.

EPA Proposal 3

EPA evaluated the timeline, and the discussion CPS Energy provides in the Demonstration and is proposing that the time requested is reasonable, but is missing a discussion on required elements for a new CCR surface impoundment. The workplan and timeline do not include the installation of a groundwater monitoring network for the new CCR surface impoundment. EPA is proposing for CPS Energy to comply with the groundwater monitoring requirements in 40 C.F.R. § 257.90(b)(2) prior to the requested cease receipt of waste date for the SRH Pond, September 1, 2023.

CPS Energy Response 3

CPS Energy will comply with the groundwater monitoring requirements in 40 C.F.R. § 257.90(b)(2) for the new surface impoundment, the Plant Drains Pond, prior to September 1, 2023. In fact, CPS Energy already installed three (3) monitor wells in August 2020 and two (2) additional monitor wells in July 2022 that will be included in the groundwater monitoring network for the new Plant Drains Pond and a schedule for the collection and analysis of eight (8) independent samples from each background well has been developed. CPS Energy's current Groundwater Monitoring System document is dated October 2017 and available on its publicly available CCR website, and this document was also submitted to TCEQ on January 24, 2022 as part of the Registration Application for Coal Combustion Residuals (CCR) Waste Management (2022 TCEQ Registration Application). Well information and groundwater results from the three initial monitor wells was included as additional information submitted to the TCEQ on June 30, 2022.

CPS Energy currently anticipates that the October 2017 Groundwater Monitoring System document will be revised to include discussion of the installation activities related to the five (5) new wells around the Plant Drains Pond no later than 60 days after the date of EPA's final conditional approval.

EPA Proposal 4

Evaluation of CPS Energy's Compliance Documentation - EPA is proposing to determine that CPS Energy did not adequately demonstrate compliance with the following portions of the regulations:

a. *CPS Energy failed to meet requirements in the regulations for the groundwater monitoring well placement and networks at the SRH Pond, EP, Fly Ash Landfill (FAL), and North and South Bottom Ash Ponds (collectively referred to as the BAPs) in accordance with 40 C.F.R. § 257.91.*

b. *Alternative Source Demonstrations (ASDs) are inadequate and fail to illustrate that the CCR unit is not the source in accordance with 40 C.F.R. § 257.94(e)(2) and therefore reliance on the ASDs led to noncompliance with other requirements.*

c. *CPS Energy failed to conduct statistical analysis in accordance with 40 C.F.R. § 257.93(h)(2).*

d. *CPS Energy did not correctly report radium 226/228 results in the Annual GWMCA Reports in accordance with Appendix IV to 40 C.F.R. § 257.*

CPS Energy Response 4

Responses to EPA's proposed determination that certain portions of the federal regulations have not been met are addressed in the individual responses below. As a preliminary matter, all of CPS Energy's groundwater monitoring activities have been conducted in accordance with the October 2017 Groundwater Monitoring System document discussed above, and that document and the associated Annual Ground Water Monitoring and Corrective Actions (GWMCA) Reports demonstrate compliance with the CCR Rule. As part of CPS Energy's compliance efforts, the company has evaluated new data as it is available to assess whether changes in the monitoring network may be appropriate or whether additional information may be necessary. CPS Energy believes that this is part of an appropriate iterative process and does not demonstrate non-compliance with the CCR Rule.

In fact, regarding EPA's comments about groundwater flow directions and the groundwater monitoring well networks, CPS Energy noted similar inconsistencies in groundwater flow directions in the Annual GWMCA Reports (2020 reporting year). Also noted in those Reports, CPS Energy's initiated a Water Level Study to better understand these inconsistencies. The Water Level Study was completed in 2021 and recommendations from the Study were included in the subsequent Annual GWMCA Reports (2021 reporting year). Additional information generated from the recommendations and responses to specific EPA proposals/comments will be presented in the revised document for the groundwater monitoring systems for the units and in the subsequent Annual GWMCA Reports (2022 reporting year).

Further, although CPS Energy is providing responses to the individual alleged compliance issues identified by EPA in the Proposed Decision below and intends to address such issues, CPS Energy notes that EPA published its final partial approval of the Texas state CCR permit program in June 2021. See Texas: Approval of State Coal Combustion Residuals Permit Program, 86 Fed. Reg. 33,892 (June 28, 2021). Pursuant to EPA's approval, "[t]he Texas CCR permit program [operates] in lieu of the Federal CCR program, (40 CFR part 257, subpart D) with the exception of the provisions for which the state did not seek approval." 86 Fed. Reg. at 33,893. Texas did not seek approval for 30 TAC section 352.1231, the state analog to 40 CFR 257.103 (containing the alternative closure requirements related to requests for extensions to operate certain units beyond April 2021). However, Texas sought and received approval for its groundwater monitoring provisions, including the state corollaries to the provisions noted above contained within 40 C.F.R. 257.90 to 257.98, which is the primary subject matter area for which EPA seeks additional compliance actions. Given that the Texas program now operates "in lieu of the Federal CCR program" specifically with respect to the groundwater monitoring provisions, the federal groundwater provisions at 257.90 to 257.98 would not appear to remain applicable in Texas as part of a compliance review and extension determination conducted by EPA for Texas facilities under 257.103(f)(1)(iii). EPA's proposal to require compliance with 257.90 to 257.98 for companies within Texas seeking extensions of the April 2021 disposal deadline also creates logistical and practical difficulties – specifically, potentially competing regulatory obligations in the event the state interprets the applicable state groundwater monitoring provisions differently than EPA interprets compliance with 257.90 to 257.98.

Nevertheless, CPS Energy at this time is providing substantive responses to EPA's proposed findings related to its compliance with the federal provisions noted above. Although CPS Energy does not believe EPA's proposed conditions are necessary or appropriate, CPS Energy is planning to commit to meet EPA's proposed conditions pending review of EPA's final decision on the Demonstration.

EPA Proposal 4a FAL

Regarding the FAL groundwater monitoring network, EPA has specifically identified the following:

- *Location of the background monitoring wells prevents adequate characterization of background groundwater that has not been affected by a CCR unit.*
    - *Neither background monitoring wells JKS-45 nor JKS-57 are consistently upgradient of the FAL.*
    - *JKS-45 is downgradient or sidegradient to the groundwater flow during various sampling events.*
    - *JKS-57 is downgradient or sidegradient to the FAL during various sampling events.*
- *Downgradient well spacing does not monitor all potential contaminant pathways. Spacing between downgradient monitoring wells JKS-45 and JKS-60 at the northeast corner of the FAL is leaving potential contaminant pathways unmonitored.*
- *Downgradient monitoring wells are not placed at the CCR unit waste boundary.*

CPS Energy Response 4a FAL

As noted above, groundwater monitoring at the FAL was performed in accordance with the 2017 Groundwater Monitoring System document, which is in compliance with the applicable state program regulations. Nevertheless and as previously indicated in the Annual GWMCA Reports, CPS Energy conducted a Water Level Study to determine if refinements to the groundwater monitoring program are appropriate. CPS Energy plans to implement the recommendations presented in the Water Level Study and has already installed two (2) additional soil borings (dry monitor wells) to address some of the recommendations.

EPA Proposal 4a EP

Regarding the EP groundwater monitoring network, EPA has specifically identified the following:

- *Inadequate due to the location of the background monitoring well. EPA is proposing to determine that JKS-63/63R and JKS-47 have been affected by the Evaporation Pond or that sampling errors may be resulting in elevated detections of constituents.*

CPS Energy Response 4a EP

As noted above, groundwater monitoring at the EP was performed in accordance with the 2017 Groundwater Monitoring System document, which is in compliance with the applicable state program regulations. Nevertheless and as previously indicated in the Annual GWMCA Reports, CPS Energy conducted a Water Level Study to determine if refinements to the groundwater monitoring program are appropriate. CPS Energy plans to implement the recommendations presented in the Water Level Study.

EPA Proposal 4a SRH Pond

Regarding the SRH Pond groundwater monitoring network, EPA has specifically identified the following:

- *EPA reviewed the groundwater monitoring well network for the SRH Pond and is proposing to determine that the monitoring network fails to comply with the regulations.*
    - *Background well JKS-49 appears to be potentially impacted by the SRH Pond.*
    - *Portions of the downgradient waste boundary have no monitoring wells and potential contaminant pathways are unmonitored.*
    - *Groundwater monitoring system has been amended and the revised monitoring system has not been certified by a Professional Engineer (P.E.) to be in compliance with the requirements of 40 C.F.R. § 257.91.*
    - *Downgradient eastern border of the SRH Pond is upgradient of the BAPs, and therefore, this downgradient eastern boundary of the SRH Ponds is required to be monitored.*
    - *EPA is proposing to conclude that the groundwater monitoring network for the SRH Ponds fails to meet the requirements of 40 C.F.R. § 257.91(f).*

CPS Energy Response 4a SRH Pond

As noted above, groundwater monitoring at the SRH Pond was performed in accordance with the 2017 Groundwater Monitoring System document, which is in compliance with the applicable state program regulations. Nevertheless and as previously indicated in the Annual GWMCA Reports, CPS Energy conducted a Water Level Study to determine if refinements to the groundwater monitoring program are appropriate. CPS Energy plans to implement the recommendations presented in the Water Level Study and has already installed one (1) additional monitor well to address some of the recommendations.

EPA Proposal 4a BAPs

Regarding the BAP groundwater monitoring network, EPA has specifically identified the following:

- *EPA is proposing that the number and spacing of the monitoring wells is insufficient to monitor all potential contaminant pathways and that the groundwater flow is not fully characterized.*
    - *EPA is proposing that CPS Energy define the groundwater flow along the northern boundary of the North BAP to determine if it is downgradient and that there should be at least one downgradient monitoring well along the northern boundary of the North BAP to characterize the groundwater flow, the quality of groundwater passing the waste boundary, and to monitor all potential contaminant pathways.*
- *Background well JKS-49 is not consistently depicted as upgradient of the BAPs.*

- *EPA is proposing that JKS-49 should be considered a downgradient well and that background conditions should be determined by a well clearly not impacted by the unit.*

CPS Energy Response 4a BAPs

As noted above, groundwater monitoring at the BAPs was done in accordance with the 2017 Groundwater Monitoring System document, which is in compliance with the applicable state program regulations. Nevertheless and as previously indicated in the Annual GWMCA Reports, CPS Energy conducted a Water Level Study to determine if refinements to the groundwater monitoring program are appropriate. CPS Energy plans to implement the recommendations presented in the Water Level Study and has already installed one (1) additional monitor well to address some of the recommendations.

EPA Proposal 4b

EPA is proposing to determine that the ASDs did not provide sufficient evidence to substantiate that natural variability was the source of the SSIs and that the BAPs, Evaporation Pond, and FAL were not the sources.

In order to provide sufficient evidence for an ASD for a particular impoundment, relevant data would need to be presented to confirm the validity of the upgradient location determination. Since the comparisons were not based on data with such conditions, the ASDs are insufficient.

CPS Energy Response 4b

Although CPS Energy believes that the ASDs are sufficiently supported, CPS Energy plans to provide additional evidence and relevant data to confirm the validity of the natural variability and the validity of the upgradient location determination. As noted above, some of this additional information is currently being collected and evaluated and will be presented in more detail in the subsequent Annual GWMCA Reports (2022 reporting year).

EPA Proposal 4c

EPA is proposing to determine that CPS Energy failed to provide evidence of statistical analysis for the spring sampling events.

EPA is proposing this lack of statistical analyses results in failure to comply with 40 C.F.R. § 257.93(h)(2) at the SRH Pond, BAPs, Evaporation Pond, and FAL.

CPS Energy Response 4c

Contrary to EPA's proposed determination, spring sampling results were compared to statistically generated prediction limits and these sampling results were presented as Attachment C in the Annual GWMCA Reports (2018, 2019, and 2020 reporting years) and as Attachment D in the Annual GWMCA reports (2021 reporting year) for the various units. These results were also presented in the 2022 TCEQ Registration Application and CPS Energy is currently addressing requests for additional information from TCEQ.

EPA Proposal 5

EPA is proposing that CPS Energy correct the reported radium levels in the Annual GWMCA Reports to include radium 226/228 combined concentrations.

EPA is proposing that CPS Energy correct the reported values to show if they are valid or invalid results (in response to negative results).

CPS Energy Response 5

Groundwater samples were collected and analyzed for Radium 226 and 228 during the eight background sampling events for the various units. CPS Energy is currently addressing EPA's proposal and no later than 30 days after the date of EPA's final decision, CPS Energy plans to correct the reported radium values in the Annual GWMCA Reports (2021 reporting year) for the various units.

EPA Proposal 6

For these reasons presented in the Proposed Decisions, EPA is proposing to conditionally approve an extension request of the cease receipt of waste date to use the SRH Pond until September 1, 2023, provided that the following conditions are met:

a. *Within 30 days of the date of EPA's final decision, CPS Energy shall post on its public CCR website a statement committing to meet all the conditions to qualify for the conditional approval.*

b. *No later than five days after the date of EPA's final decision, CPS Energy shall cease receipt of waste into the Evaporation Pond.*

c. *No later than 60 days after the date of EPA's final decision, CPS Energy shall submit to EPA a revised plan for the groundwater monitoring systems for the SRH Ponds, North and South BAPs, Evaporation Pond, and the FAL that meet the performance standard required by 40 C.F.R. § 257.91. This condition will not be met until EPA approves the revised plan. The plan must address the following items:*

    i. *Characterization of groundwater flow direction around the CCR units, taking into account seasonal or temporal fluctuations and any effects of extraction wells, supported by a sufficient number of groundwater elevation measurements, appropriately located and spaced, to support a determination that the proposed groundwater monitoring systems meet the criteria in 40 C.F.R. § 257.91(a) and (b);*

    ii. *Identification of wells or the installation of new wells that characterize background groundwater quality and their locations;*

        - *CPS Energy shall provide information about samples used to calculate background levels to demonstrate that they meet the performance standard in 40 C.F.R. § 257.91(a)(1)(ii), including when they were obtained, operational status of the CCR unit at that time, and the sampling and analytical results and procedures used;*

iii. *Installation of wells at the downgradient waste boundary of the CCR units, with sufficient number and adequate spacing to monitor all potential contaminant pathways, consistent with the performance standard in 40 C.F.R. § 257.91(a)(2) based on criteria in 40 C.F.R. § 257.91(b); and*

iv. *P.E. certifications that document how the revised groundwater monitoring systems meet the performance standard in 40 C.F.R. § 257.91.*

d. *No later than 60 days after the date of EPA's approval of the revised plan of the groundwater monitoring system at each CCR unit, CPS Energy shall complete installation of new wells at that unit.*

e. *No later than 90 days after the date of EPA's approval of both the groundwater monitoring system and the sampling and analysis plan for each CCR unit, CPS Energy shall sample all wells in the revised groundwater monitoring systems at all CCR units in accordance with 40 C.F.R. § 257.95(b). All groundwater sampling and data analyses shall be conducted in accordance with the requirements of 40 C.F.R. § 257.93 through 257.95.*

f. *No later than 30 days after the date of EPA's final decision, CPS Energy will post amended Annual Groundwater Monitoring and Corrective Action Reports to include combined radium 226/228 results and validating the negative radium values.*

g. *No later than September 1, 2023, and prior to initial operation of the Plant Drains Pond, CPS Energy will comply with the groundwater monitoring requirements of a new CCR surface impoundment in accordance with 40 C.F.R. § 257.90(b)(2).*

CPS Energy Response 6

Pending review of EPA's final conditional approval, CPS Energy plans to commit to addressing conditions a., c., d., e., f., and g. presented above and to resolve these conditions within the time commitments identified for the individual conditions. As noted previously, however, CPS Energy does not believe the proposed conditions are necessary or appropriate, and urges EPA to reconsider those conditions based on the material in the application and the responses contained herein.

Regarding condition b. presented above, CPS Energy has provided additional information in **CPS Energy Response 1** that if wastewaters generated during maintenance events were diverted to the SRH Pond, these wastewaters would require pretreatment to remove dissolved metals before they could be discharged; however, the SRH Pond is not equipped with a pretreatment system. In addition, the allowable discharges under the existing and proposed Industrial Wastewater Permit for the SRH Pond do not cover the types of wastestreams currently discharged into the EP. CPS Energy is not allowed, under any circumstances, to discharge metal cleaning wastewater or chemical cleaning wastewater from the SRH Pond, therefore, these wastestreams cannot be diverted to the SRH Pond.

As such, CPS Energy requests EPA to conditionally approve an updated alternative closure deadline of September 30, 2022, for the EP based on the additional information provided in

CPS Energy Response 1 regarding the inability of the SRH Pond to receive metal cleaning wastestreams.

EPA Proposal 7

Proposed Procedures

EPA does not intend that the addition of these conditions establish independently enforceable requirements.

These added conditions must be met for CPS Energy to obtain, and maintain, approval for an alternative deadline pursuant to 40 C.F.R. § 257.103(f)(1). This means that failure to meet the conditions would result in revocation of the conditional approval, but that failure would not itself be grounds for enforcement action.

EPA is further proposing that, if CPS Energy fails to meet any of the conditions in the final decision, the conditional authorization will be automatically revoked and will convert to a denial. In such an event, EPA is proposing that CPS Energy's deadline would revert to 135 days from the date of EPA's final decision, which is the deadline that would have been established had EPA originally denied the extension request.

In addition, if EPA notifies CPS Energy that a submission that is required under any of the conditions listed above does not meet the relevant performance standards, EPA is proposing that the conditional approval would automatically convert to a denial as of the date of the notification to CPS Energy. In this case, the new deadline to cease receipt of waste would be 135 days from the date of the notification.

EPA is proposing that CPS Energy post a notice on its public CCR website within 5 days of meeting each condition. EPA is not proposing to provide an opportunity for notice and comment or to otherwise establish any process to further adjudicate issues relating to CPS Energy's compliance with the conditions. EPA may approve a submitted plan with or without comments or may deny the plan outright. In either case EPA does not intend to provide any opportunity for further consultation. EPA will notify CPS Energy if the Agency determines that a condition has not been met but has not yet determined the form or timing of the notification. One option that EPA is considering would be to send a letter to CPS Energy and post a notice on the Agency's website. EPA requests comment on whether these procedures would be appropriate, and on whether there are alternative mechanisms that would be more appropriate.

CPS Energy Response 7

CPS Energy agrees that the conditions proposed by EPA, if finalized, do not create independently enforceable requirements. This is especially the case here, where Texas has an EPA-approved CCR permit program that operates "in lieu of the Federal CCR program" on which EPA's proposed conditions are based. See also **CPS Energy Response 4** above.

As noted in these comments, although CPS Energy does not believe the conditions are necessary or appropriate, CPS Energy is nevertheless planning to commit both to meeting EPA's proposed conditions and to posting a notice on its public CCR website within 5 days of meeting conditions a., c., d., e., f., and g. presented above, pending review of EPA's final conditional approval. In order to ensure sufficient due process once CPS Energy provides its notice within 30 days of the final conditional approval to meet the identified conditions, however, any withdrawal of the conditional approval from EPA should not establish a new cease waste receipt deadline that is any earlier than 150 days from the date of EPA's notice to CPS Energy that a condition or submission has not been met or does not meet the relevant performance standards. As noted in **CPS Energy Response 8** below, discussions with ERCOT regarding reliability impacts are underway, and a period of no less than 150 days may be necessary in the future to notify ERCOT of an outage and/or determine if an outage request will be denied due to grid reliability concerns.

In addition, CPS Energy respectfully requests the opportunity to engage with the Agency on whether the submissions identified in conditions a., c., d., e., f., and g above meet the relevant performance standards before receiving a notice that the conditional approval has been revoked. In some instances, there may be simple and easily correctable miscommunications that could be addressed through engagement; in others, there may be interpretative issues regarding compliance with the conditions that required further direction from EPA.

EPA Proposal 8

EPA could authorize additional time for CPS Energy to continue to use the impoundment to the extent necessary to address demonstrated grid reliability issues.

CPS Energy must submit a planned outage request to ERCOT within 15 days of EPA's final decision and CPS Energy provides the ERCOT determination disapproving the planned outage and the formal reliability assessment.

However, in some cases ERCOT might determine that the planned outage could not occur without triggering operational reliability violations. EPA is aware of no evidence that such is the case with Calaveras Power Station.

CPS Energy Response 8

CPS Energy has initiated conversations with ERCOT to address claims regarding adverse impacts from an outage if the J.K. Spruce Plant was not able to continue operating. See also **CPS Energy Response 2** above. As noted below, however, due to import limitations, CPS Energy currently expects that an extended outage of Spruce 1 & 2 would cause reliability issues to the grid.

In the event that EPA ultimately denies this Demonstration, CPS Energy will commit to submitting a planned outage request within 15 days of EPA's final decision and to providing the ERCOT determination. It is not clear, however, if this outage would be considered a planned outage, a maintenance outage, or a forced outage, and it further does not appear that 120 days (135 days less the 15 days to provide notice) would be sufficient pursuant to existing ERCOT requirements.

Specifically, the Notification of Suspension of Operations (NSO) provide that, except for the occurrence of a Forced Outage, CPS Energy must notify ERCOT in writing no less than 150 days prior to the date on which the Resource Entity intends to cease or suspend operation of a Generation

Resource for a period of greater than 180 days. Accordingly, unless the outage is treated as a Forced Outage, 135 days is not sufficient time to comply with ERCOT's notice requirements.

Also note the due to import limitations to San Antonio that CPS Energy is experiencing during the high peak demand conditions of Summer 2022, the extended outages of Spruce 1 & 2 (Total 1410 MW capacity) are expected to cause reliability issues to the grid and CPS Energy does not have enough Demand Response Capacity to cover the unavailability of 1410 MW if Spruce 1 & 2 were not in operation. A detailed analysis would need to be performed by ERCOT to determine full reliability impact which could include, but not limited to, addressing overloaded transmission element due to contingency event, addressing potential voltage criteria violations, and transient voltage stability concerns.

Finally, per EPA's statement that the denial procedures identified in the Proposed Decision apply in the event that "EPA issues a conditional approval that converts to a denial", CPS Energy understands and agrees that ERCOT should have the opportunity to determine that CPS Energy must delay a planned outage if necessary to avoid a reliability violation. For the reasons noted above, however, 135 days from the date the conditional approval is converted to a denial may be insufficient to provide proper notice of an outage to ERCOT and conduct a fulsome reliability assessment, so CPS Energy respectfully requests that the 135 day deadline to cease waste receipt (running from a final denial or conversion of a conditional approval to a denial) be lengthened to at least 150 days.

Please call me at (210) 353-3625 with any questions.

Sincerely,

Michael M. Malone, P.E., LEED Green Associate, R.E.M.
CPS Energy Senior Manager
Environmental Management

cc: Kirsten Hillyer (via email)
Frank Behan (via email)