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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 21, 2022

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

RE: **Uranium Energy Corp. (Applicant)**
TCEQ Docket No. 2022-1553-WDW

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Request for Hearing and Request for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Jamison".

Jennifer Jamison, Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2022-1553-WDW

**APPLICATION BY
URANIUM ENERGY
CORP. FOR RENEWAL
AND AMENDMENT OF
PERMIT NOS. WDW423
AND WDW424**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL
QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE
TO REQUEST FOR HEARING AND REQUEST FOR RECONSIDERATION**

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or the Commission) files this Response to Request for Hearing and Request for Reconsideration in the above-referenced matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by Uranium Energy Corp. (Applicant or UEC) for renewal and amendment of two Class I injection well permits WDW423 and WDW424. The Commission received comments, a request for a contested case hearing, and a request for reconsideration from Goliad County Groundwater Conservation District (GCHCD or District). For the reasons stated herein, OPIC respectfully recommends the Commission find that the District is an affected person in this matter and grant its pending hearing request. Further, OPIC recommends denial of the District’s request for reconsideration.

B. Background of Facility

UEC applied for renewal and amendment of two Class I injection well permits WDW423 and WDW424, authorizing the injection of nonhazardous wastewater generated from the processing of ion exchange resin from in-situ uranium mining operations. The facility would be located at 14869 North United States Highway 183, Yorktown, in Goliad County, and consists of a 17.0-acre tract of land out of the Peter Gass Survey, Abstract Number 129, which would include the two injection wells (WDW423 and WDW424) and associated pre-injection units. Injection well WDW423 would be located approximately 1,900 feet from the east line and 1,900 feet from the south line of the Peter Gass Survey, A-129, Latitude 28°51'53" North, Longitude 97°21'26.6" West. Injection well WDW424 would be located approximately 2,100 feet from the east line and 2,700 feet from the south line of the Peter Gass Survey, A-129, Latitude 28°52'1.8" North, Longitude 97°21'28.1" West. The facility would not be located within the boundaries of the Coastal Management Program.

The permitted injection zone for wells WDW423 and WDW424 is within the Frio and Vicksburg Formations from 2,800 to 3,590 feet below ground level (BGL). The authorized injection interval is within the Vicksburg Formation from 3,200 to 3,590 feet BGL. The Jasper Aquifer is the lowermost underground source of drinking water (USDW) in the vicinity of the well locations. Its base occurs at depths of approximately 1,750 feet BGL in this area.

Permits WDW423 and WDW424 were previously issued for these Class I injection wells on May 25, 2010 for a term of ten years. Because the application for renewal was initiated before the permit expiration date, the existing permit remains in full force and effect and will not expire until Commission action on the application for renewal is final under 30 TAC § 305.65(4). The injection wells have not been drilled, constructed, or completed.

This application, if granted, authorizes the construction and operation of Class I injection wells WDW423 and WDW424 for injection of industrial nonhazardous wastes associated with in-situ uranium mining. A permit amendment has been requested to reduce the maximum allowable surface injection pressure from 976 to 761 psig (pounds per square in gauge) when the injected waste stream specific gravity is 0.997 to 1.005 and reduce the maximum allowable surface injection pressure from 914 to 698 psig when the injected waste stream specific gravity is 1.005 to 1.05.

C. Procedural Background

The TCEQ received this application on January 23, 2020, and declared it administratively complete on April 27, 2020. The Notice of Receipt of Application and Intent to Obtain a Nonhazardous Waste Underground Injection Control Permit Renewal was published on May 28, 2020 in the *Goliad Advance-Guard* in Goliad County. The Executive Director (ED) completed the technical review of the application on April 4, 2022 and prepared two draft permits. The Notice of Application and Preliminary Decision for Nonhazardous Waste Underground Injection Control Permit Renewal and Amendment was published on April 28, 2022 in the *Victoria Advocate*, on May 4, 2022 in *The Cuero Record*, and on May 5, 2022 in the *Goliad Advance-Guard*, *Karnes Countywide*, *Bee-Picayune*, and *Refugio County Press*. The public comment period ended on June 6, 2022. The Chief Clerk of TCEQ mailed the Decision of the ED and the ED's Response to Comments (RTC) on September 13, 2022. The deadline to request a contested case hearing was October 13, 2022. TCEQ received timely comments, hearing requests, and a request for reconsideration from Goliad County Groundwater Conservation District.

II. APPLICABLE LAW

A. Hearing Requests

The Application was filed after September 1, 2015 and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Under 30 TAC § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the requestor's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

Under 30 TAC § 55.203(a), an "affected person" is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal

justiciable interest. Relevant factors to be considered in determining whether a person is affected include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the executive director; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission shall grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)–(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

B. Request for Reconsideration

Any person may file a request for reconsideration of the ED's decision under TAC § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

III. DISCUSSION

A. Determination of affected person status

Goliad County Groundwater Conservation District

Heather Sumpter, general manager of GCGCD, submitted numerous timely comments and requests for a contested case hearing on behalf of the District. The hearing requests state that GCGCD is charged with the protection, preservation, and conservation of the groundwater within its jurisdiction, which includes Goliad County. The ED's map confirms the proposed facility is located within the boundaries of Goliad County, and accordingly, is within the jurisdiction of the District. The hearing requests raise concerns about possible negative effects to landowners and the aquifer. The District's comment letter dated May 24, 2022 elaborates on these concerns, detailing potential issues regarding the proposed location of the two wells, and questioning whether they will be located on major faults. In addition, the letter raises concerns about the protection of drinking water produced from the many domestic and livestock wells in the vicinity of the faults.

Pursuant to 30 TAC §55.203(b), governmental entities, including local governments, with authority under state law over issues contemplated by the application may be considered affected persons. Also, for governmental entities, their statutory authority over or interest in the issues relevant to the application should be considered to determine affectedness. *See* 30 TAC § 55.203(c)(7). Chapter 26 of the Texas Water Code (TWC) states that county governments have statutory authority to protect their groundwater supplies from contamination, including the ability to bring a civil action in district court to prohibit discharges of contamination into or adjacent to waters of the state. TWC Chapter 26, Subchapter D. Prohibition Against Pollution; Enforcement, and Subchapter E. Authority of Local Governments.

The concerns raised by the District regarding groundwater contamination and the appropriateness of the injection wells' locations are within the Commission's jurisdiction on this application. 30 TAC § 55.203(c)(1). Therefore, OPIC finds that the District has a personal justiciable interest because it is a governmental entity with statutory authority over groundwater quality issues, and groundwater quality issues are relevant to the application. As such, OPIC finds that Goliad County Groundwater Conservation District is an affected person under 30 TAC § 55.203(b) and (c)(7) and recommends granting its pending hearing request.

B. GCGCD's Request for Reconsideration

The District submitted a timely request for reconsideration with several assertions contained in its Ground Water Solutions memo, as well as concerns regarding potential vertical movement of contaminated injection fluids from the injection zones to potable groundwater above. As more fully discussed below, some of these issues are relevant and material to the decision on this application. However, an evidentiary record on these issues would be necessary for OPIC to make a recommendation to the Commission on whether the ED's decision should be reconsidered.

At this time, OPIC is recommending a hearing, but prior to the development of an evidentiary record, OPIC cannot recommend reversal of the ED's decision or remand of the application to the ED.

C. Issues raised in the hearing requests remain disputed

The hearing requests raise the following issues related to the proposed permit:

1. Whether groundwater and surface water will be adequately monitored or protected from pollution; and
2. Whether the location and design for the injection wells and pre-injection facilities are appropriate.

There is no agreement between the hearing requestor and the ED on the issues raised in the hearing requests, thus, they remain disputed.

D. Whether the dispute involves questions of fact or of law

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. 30 TAC § 55.211(c)(2)(A). All issues raised by affected the person are issues of fact.

E. Whether the issues were raised by the hearing requestors during the public comment period

All issues raised in the hearing requests discussed above were raised in comments that were submitted timely.

F. Whether the hearing requests are based on issues raised solely in public comment which has been withdrawn

The hearing requests are based on timely comments that have not been withdrawn.

G. Whether the issues are relevant and material to the decision on the application

The hearing requests raise issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii). To refer an issue to the State Office of Administrative Hearings (SOAH), the Commission must find that

the issue is relevant and material to the Commission's decision to issue or deny these permits. Relevant and material issues are those governed by the substantive law under which these permits are to be issued. *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).

Groundwater contamination

Rules and statutes applicable to underground injection well permits are primarily found in Title 30, Chapters 39, 55, and 331 of the Texas Administrative Code and Chapter 27 of the Texas Water Code. Chapter 27 requires the Commission to maintain the quality of fresh water in the state to the extent consistent with the public health and welfare and to prevent underground injection that may pollute fresh water. *See* TWC § 27.003. An injection well permit "shall include terms and conditions reasonably necessary to protect fresh water from pollution." 30 TAC § 331.5(a). Further, the Commission is charged with "prevent[ing] underground injection that may pollute fresh water." 30 TAC § 331.1(a). Therefore, Issue No. 1 regarding groundwater contamination is relevant and material to the Commission's decision on this application.

Adequacy of location of injection wells

An application for a Class I injection well permit must provide delineation of all faults within the area of review (AOR) together with a demonstration that the fault is not sufficiently transmissive or vertically extensive to allow migration of hazardous constituents out of the injection zone under 30 TAC § 305.49(a)(1) and § 331.121(a)(2)(P). Therefore, Issue No. 2 regarding appropriateness of location for injection wells is relevant and material to the Commission's decision on this application.

H. Issues Recommended for Referral

1. Whether groundwater and surface water will be adequately monitored or protected from pollution; and
2. Whether the location and design for the injection wells and pre-injection facilities are adequate.

I. Maximum expected duration of hearing


Commission Rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier. 30 TAC § 50.155(d)(2). To assist the Commission in stating a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

IV. CONCLUSION

Having found that Goliad County Groundwater Conservation District qualifies as an affected person in this matter, OPIC respectfully recommends the Commission grant its hearing request and refer Issue Nos. 1-2 specified in Section III. H. for a contested case hearing at SOAH with a maximum duration of 180 days. OPIC further recommends the Commission deny the District's request for reconsideration.

Respectfully submitted,

Garrett T. Arthur
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By: 

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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2022 the original of the Office of Public Interest Counsel's Response to Hearing Requests was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



Jennifer Jamison

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See attached list.

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