

**SOAH DOCKET NO. 582-23-15496
TCEQ DOCKET NO. 2022-1553-WDW**

APPLICATION BY URANIUM	§	BEFORE THE STATE OFFICE
ENERGY CORP FOR RENEWAL	§	
AND AMENDMENT OF CLASS I	§	OF
INJECTION WELL PERMITS	§	
WDW423 AND WDW424	§	ADMINISTRATIVE HEARINGS

**PROTESTANT GOLIAD COUNTY GROUNDWATER CONSERVATION DISTRICT’S
REPLY TO URANIUM ENERGY CORP’S AND THE EXECUTIVE DIRECTOR’S
EXCEPTIONS TO THE PROPOSAL FOR DECISION**

TO THE HONORABLE CHAIRMAN NIERMANN AND COMMISSIONERS OF THE TEXAS
COMMISSION ON ENVIRONMENTAL QUALITY:

The Goliad County Groundwater Conservation District (“District”) files this Reply to Uranium Energy Corp’s (“UEC”) and the Executive Director’s (“ED”) Exceptions to the Proposal for Decision (the “PFD”) submitted by the Administrative Law Judges (“ALJs”) in the above-referenced matter.

I. INTRODUCTION

The ED and UEC’s exceptions largely rehash the same arguments made at the hearing. These arguments were rejected because the evidence overwhelmingly shows that UEC made minimum effort to gather the necessary data, thus failing to adequately describe the local geology and transmissivity of nearby faults. UEC’s grossly deficient application failed to prove that its proposed disposal wells will not pollute USDWs, including the Evangline Aquifer.

Faced with a well-reasoned and well-supported PFD, UEC and the ED resort to strained procedural arguments and misguided attacks on the ALJs’ application of TCEQ rules. These arguments either mischaracterize the PFD or are unsupported, self-serving interpretations of the TCEQ application process. UEC and the ED both incorrectly argue, again, that the information submitted in the application is meaningless, and that the relevant information might be submitted

after permits are issued once the District is no longer allowed to participate. UEC may not want to submit a scientifically defensible application demonstrating USDWs are protected before it can drill injection wells through Goliad County's primary source of drinking water, but that is the law.

II. THE CONE OF INFLUENCE AND NEARBY ARTIFICIAL PENETRATIONS ARE CRITICAL COMPONENTS OF THE APPLICATION AND DIRECTLY RELATED TO THE REFERRED ISSUES

The ED claims the PFD improperly broadens the scope of the referred issues for the contested case hearing.¹ However, the ED applies far too narrow of an interpretation of the referred issues. According to the ED, the ALJs cannot consider whether UEC's Cone of Influence ("COI") is representative of actual conditions or whether nearby wellbores will serve as potential pathways for vertical fluid migration because those items were not expressly identified as issues in the Commission's Interim Order referring this matter to SOAH. These items, however, bear directly on the overarching referred issues.

The COI is the area around the injection well that will experience increased pressure sufficient to drive fluids into an USDW. The COI is modeled using formation properties such as thickness, porosity, and permeability. Adequately delineating the COI hinges on an adequate characterization of the local geology.

The COI is critical to determining whether USDWs will be protected by demonstrating the magnitude and extent of anticipated pressure increases in the proposed injection interval, and the effect those pressure increases may have on fluid migration through nearby artificial penetrations. Identifying artificial penetrations within the COI that may allow or cause pollution of USDWs is required by TCEQ rules. It is also directly related to the question of whether the location of UEC's proposed injection wells is adequate. It is unreasonable to suggest that a protesting party must

¹ ED Exceptions at p. 1.

specifically identify each and every issue possibly relevant to a larger referred issue, or to require the Commissioners' referral to do the same. Accurate delineation of the COI and ensuring nearby artificial wellbores are properly plugged to prevent fluid migration are directly related to Issue A and Issue C.

In addition to the COI being directly related to two of the three referred issues, the ED should not have been surprised by the District's allegations. The District served the ED with Expert Disclosures on September 1, 2023, which stated, in relevant part:

and well logs. Ms. Gordon's current mental impressions and opinions are as follows:

- A. The location and design of the proposed Disposal Wells are inappropriate given nearby artificial wellbores penetrating the injection interval that could serve as pathways for injected fluids and native groundwater to migrate outside of the injection interval and could pollute USDWs. UEC has not demonstrated that the nearby artificial penetrations will prevent migration of fluids into USDWs. Moreover, UEC relied on general parameter assumptions for modeling the Cone of Influence. UEC failed to use obtainable localized data to better determine the Cone of Influence and, thus, (1) excluded from its analysis artificial penetrations through the injection interval that could result in polluting USDWs and (2) potentially miscalculated the amount of increased pressure that would move water through the artificial penetrations. UEC failed to demonstrate by the preponderance of evidence that its proposed Disposal Wells will be located, designed and operated to prevent the movement of fluids that could result in the pollution of an USDW.
- B. TCEQ should require UEC to reduce uncertainty in the Cone of Influence by reviewing and incorporating site specific and obtainable local data as input parameters in their estimations of increased pressure caused by the injection at the proposed wells. The evidence of additional USDWs and significant potential for

Moreover, the District's direct testimony, filed almost one month before the ED's deadline to file direct testimony, detailed the District's arguments regarding the inadequacy of UEC's calculated COI and the failure to identify improperly plugged wellbores.

Despite the District's overt and early disclosure of the scope of its protest, the ED failed to object to the District's arguments. The ED knew that the COI and artificial penetrations were contested issues in this case and only now—faced with an adverse PFD—claims that it would have offered expert testimony regarding these matters if they had known the issues were within the

scope of the proceeding. If the ED had genuine concerns regarding the scope of this proceeding, they had multiple opportunities to raise them prior to their exceptions.

III. UEC IS NOT ENTITLED TO AUTOMATIC RENEWAL

UEC argues, as it unsuccessfully argued at hearing, that its renewal application cannot be deficient because nothing has changed since approval of its initial application. Prior issuance of a permit, however, does not entitle an applicant to automatic renewal. With good reason, TCEQ's rules require that a renewal application undergo a technical review. For example, the technical review of UEC's renewal application revealed that the maximum injection pressure included in the 2010 permit needed to be reduced to prevent UEC's injection operations from fracturing the injection zone. This important change illustrates why renewal applications are subject to the same level of scrutiny as original permits for compliance with all applicable rules—to ensure USDWs are protected.

UEC believes the local geology and transmissivity of nearby faults have been adequately described because TCEQ issued the original permit. This position is undermined by TCEQ requiring UEC to file a major amendment with its renewal to address the incorrectly permitted maximum injection pressure. UEC managed to slip through the initial technical review with unrepresentative regional reports to describe the local geology and transmissivity of the nearby faults, but UEC's original application was not protested. The District's experts exposed significant deficiencies never before raised. UEC is asking the Commission to ignore the deficiencies instead

of taking steps to ensure USDWs are protected from migration of fluids outside of the injection zone. The application was deficient in 2010 and it is still deficient today.

IV. UEC’S APPLICATION FAILED TO ADEQUATELY CHARACTERIZE THE LOCAL GEOLOGY AND ASSESS TRANSMISSIVITY OF NEARBY FAULTS

UEC believes that the contents of its application are immune from challenge. TCEQ Instructions for Class I injection well applications include a *non-exhaustive* list of information that an applicant must provide to describe the local geology.² UEC contends if its application includes *any* information related to each listed item—regardless of the sufficiency or accuracy—it has satisfied its statutory and regulatory obligation to prove that USDWs are protected from its proposed wastewater injection, including the requirement to demonstrate that nearby artificial penetrations or faults will not serve as potential pathways for vertical migration of fluids.³

For example, UEC argues that the ALJs—by simply acknowledging that UEC’s application included a section titled “description of regional and local geology”—should have concluded that the application adequately described the local geology. For the reasons presented by the District, Landowners, and OPIC, the ALJs properly concluded that: (1) UEC made minimal to no effort to acquire any data on local geology when preparing the Application;⁴ and (2) UEC made minimal to no effort to investigate the project site for transmissivity of the faults.⁵

UEC adds in its exceptions that the ALJs misapplied the Jones Paper because that paper does not stand for the proposition that the permit should be denied.⁶ It was UEC, not the ALJs, however, that misapplied the Jones Paper by selectively relying on only a portion of the Jones Paper to argue faults in the entire Gulf Coast region tend to seal themselves but omitting from its

² APPEX-02-02 at Section V.B.

³ UEC Exceptions at pp. 4, 6-12.

⁴ PFD at p. 65.

⁵ PFD at 76.

⁶ UEC Exceptions at p. 22.

application the part that requires applicants to conduct a site-specific analysis. The primary point of the Jones Paper, as adopted by the ALJs, is that UEC inappropriately relied on a large regional study to demonstrate that the faults within the Area of Review (“AOR”) are not sufficiently transmissive to allow fluids to migrate out of the injection zone into a USDW. The ALJs correctly applied this crucial point of the Jones Paper, and correctly concluded UEC failed to meet its burden to prove the faults are not transmissive *and* that the monitoring program is adequate.

The ALJs issued a well-reasoned PFD supporting their findings that UEC failed to meet its burden of proof and their recommendation to remand the application to TCEQ staff for further review. Weighing the evidence offered at hearing and determining whether applicable statutory and regulatory requirements have been met is not, as UEC argues, “substituting their own judgment for that which is required by the TCEQ Instructions”⁷ or the ALJs “rewriting” TCEQ Instructions.⁸ Rather, the ALJs served their statutory duty as an independent decision-maker on matters TCEQ, and determined that the information included in UEC’s application was inadequate.⁹

V. ALJs UNDERSTAND THE DIFFERENCE BETWEEN SITE-SPECIFIC DATA FROM THE POST-PERMIT WELL CONSTRUCTION AND PRE-PERMIT LOCAL GEOLOGY DATA

UEC and the ED reassert their arguments from hearing that UEC can simply demonstrate that USDWs will be protected from the proposed Class I injection wells *after* TCEQ issues the permits.¹⁰ The PFD correctly concluded, however, that numerous statutory and regulatory provisions require that USDWs be proven to be protected *before* permits can be issued.¹¹ UEC

⁷ UEC Exceptions at p. 5.

⁸ UEC Exceptions at p. 6.

⁹ Tex. Gov’t. Code §2003.047.

¹⁰ ED Exceptions at p. 4-5; UEC Exceptions at 13-16.

¹¹ PFD at Conclusions of Law No. 11, 13, 14, 16, 18, 20 and 22.

claims by requiring UEC to adequately describe the local geology before the permit is issued, the ALJs are requiring UEC to drill the injection well before the permit is issued.¹² This is either a severe misunderstanding or intentional mischaracterization of the PFD and the supporting evidence that the District’s Closing Argument explained in great detail.

The PFD does not conclude—and the District never argued—that UEC must drill the injection well and submit the site-specific data as part of the application. The District argued, and the ALJs agreed, that UEC’s application and testimony provided *no* information about the local geology to allow TCEQ to determine that USDWs are protected from fluid migration through artificial penetrations within the COI or transmissive faults within the AOR. Based on the following sentence from the PFD, the ALJs clearly understand the difference between local geology data and the site-specific data that will be included in the completion report when the injection well is drilled: “The ALJs recognize that the *site-specific* data will be collected after the wells are drilled, but do not agree with UEC’s contention that, at this point, TCEQ should issue the permits based on its estimations and predictions of *local* geology.”¹³ The ALJs have not recommended remanding the application so UEC can drill the injection well. The ALJs recommend remanding the application so UEC can submit information to adequately describe the local geology. TCEQ Instructions require “sufficient well data” be used. UEC can obtain this information from records of nearby wells, drilling a test hole (different than drilling the injection well), or using any other reliable source. UEC never even tried to obtain this information that is required by TCEQ Instructions.

¹² UEC Exceptions at p. 15.

¹³ PFD at p. 65 (emphasis added).

UEC claims it can provide local geology information after the permit is issued because Class I injection wells are unique and unlike other permitting programs.¹⁴ UEC fails to cite any legal authority for this position. TCEQ Instructions for *Permit Application to Dispose of Waste in a Class I Injection Well* unequivocally require that an applicant must provide local in the application. There is no exception provided for Class I injection well applications—these are the instructions for Class I injection well applications. Local geology information is required because very large heterogeneous formations like the Vicksburg can differ significantly depending on the location. Extrapolations for the site-specific geology can be made from local geology within 20 miles, but TCEQ Instructions and regulations do not permit extrapolating the local geology from data beyond 20 miles. Even if TCEQ Instructions and regulations accepted extrapolations from regional data beyond 20 miles, there must not be well data within 20 miles available and the regional data must be representative of the local geology. UEC, however, made little to no effort to even see what local information was available, and instead relied exclusively on regional data from nonrepresentative regional data in the Loucks Paper.

UEC's only support for its untenable position that it can describe local geology after it gets its permit is just a reference by the ALJs to ED testimony that post permitting review of well construction is an integral part of the permitting process.¹⁵ The ALJs referenced that testimony, however, in the context of the required monitoring program, not in relation to UEC's obligation to describe the local geology. Neither UEC nor the ED have cited any legal authority that the future well completion report excuses UEC from complying with the numerous regulations that require USDWs be proven to be protected before a permit for a Class I injection well can be issued. UEC's statement that it is unaware of other Class I non-hazardous well applications that were required to

¹⁴ UEC Exceptions at p. 3.

¹⁵ UEC Exceptions at p. 29 (citing PFD at p. 80).

conduct a core test for site-specific information is unsubstantiated and never offered as testimony. It is also irrelevant because UEC has no idea whether those applications correctly described the local geology. The Commission, ALJs, District or OPIC have no idea what applications UEC is referring to, but if they are the ones that its testifying experts have submitted, the ALJs do know that those were never subject to a contested hearing. The ALJs correctly applied TCEQ regulations and TCEQ Instructions. UEC continues to incorrectly assert it can resolve its deficient application after the permit is issued.

VI. THE DISTRICT PROPOSES AN ADDITION TO CONCLUSIONS OF LAW NO. 16 AND 17 REGARDING TRANSMISSIVITY OF FAULTS

The ED argues TCEQ Rules 335.205(a)(5)(A) and 331.121(a)(2)(P) only require a demonstration that faults are not transmissive for “hazardous constituents”¹⁶ which the ED admits can be present in Class I injection wells disposing of nonhazardous waste or can be present in native fluids of the injection zone. The ED also directs the ALJs to TCEQ Rule 331.121(c)(3)(B)(i) that further requires UEC to demonstrate the confining zone is laterally continuous and free of transecting, transmissive faults or fractures over an area sufficient to prevent the movement of *any* fluids into a USDW or freshwater aquifer.¹⁷ TCEQ Instructions also require this demonstration.¹⁸

To reflect the ED’s correct reference to TCEQ Rule 331.121(c)(3)(B)(i), the District respectfully requests that the ALJs insert two additional Conclusions of Law after Conclusions of Law 17 as follows:

Conclusion of Law 18:	Class I injection wells shall be sited such that the confining zone is laterally continuous and free of transecting, transmissive faults or fractures over an area sufficient to prevent the movement of fluids into a USDW or freshwater aquifer. 30 Tex. Admin. Code § 331.121(c)(3)(B)(i).
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¹⁶ ED Exceptions at p. 6.

¹⁷ ED Exceptions at 6 (citing 30 Tex. Admin. Code § 331.121(c)(3)(B)(i)) (emphasis added); APPEX-02-02 at Section V.B.7.

¹⁸ APPEX-02-02 at Section V.B.7.

Conclusion of Law 19: UEC failed to prove that the confining zone is laterally continuous and free of transecting, transmissive faults or fractures over an area sufficient to prevent the movement of fluids into a USDW or freshwater aquifer. 30 Tex. Admin. Code § 331.121(c)(3)(B)(i).

Should the ALJs adopt these additional Conclusions of Law, then Conclusions of law 18 – 26 would become Conclusions of Law 20 – 28.

VII. DRAFT PERMITS MUST INCLUDE AMBIENT MONITORING AS A PERMIT CONDITION TO DETECT FLUID MIGRATION BEFORE TCEQ CAN ISSUE UEC’S CLASS I INJECTION WELL PERMITS

When there is potential for fluid movement from the injection zone and a potential value of monitoring wells to detect fluid movement, the ED shall require a monitoring program with periodic monitoring of the aquifer overlying the injection zone and lowermost USDW.¹⁹ While the ED urges again in her exceptions that the monitoring program in the Draft Permits is adequate, the ALJs correctly rejected this argument and concluded that the potential for fluid movement from the injection zone requires the monitoring program to include periodic ambient monitoring if UEC’s injection wells are permitted.²⁰ The ED argues there is no need for ambient monitoring if UEC never installs the injection wells.²¹ Adding ambient monitoring as a permit condition, however, would not require installation of monitoring wells if UEC never drill and operate the injection wells.

Contrary to UEC’s the ED’s contention,²² it is not premature to include ambient monitoring as part of the monitoring program in the Draft Permit. In fact, ambient monitoring is required due to the potential for fluid migration outside of the injection zone. Additional information is not needed from the well construction report (drafted after the permits are issued) to design the

¹⁹ 30 Tex. Admin. Code § 331.64(h)(1)(C) and (D).

²⁰ PFD at Findings of Fact Nos. 44 and 47.

²¹ ED Exceptions at p. 8.

²² UEC Exceptions at p. 27-28; ED Exceptions at p. 8.

monitoring program required by TCEQ Rule 331.64(h)(1)(C) and (D). The ED can revise the exact locations, depths, and sampling schedule for the ambient monitoring after reviewing the completion report, but ambient monitoring must be included as a permit condition to satisfy TCEQ Rule 331.64(h) and the numerous regulations that require a demonstration that USDWs are protected before Class I injection wells are permitted.

UEC argues the ALJs are rewriting TCEQ Rule 331.64(h), and TCEQ is not to consider the monitoring program prior to permit issuance.²³ Specifically, UEC argues TCEQ can only consider Chapter 331, Subchapter G (“Consideration Prior To Permit Issuance”) when reviewing a Class I injection well application. If UEC were correct, then TCEQ should not have considered all other monitoring and testing requirements that were included them in the Draft Permits. UEC’s proposed scope of the application review would also exclude all General Standards and Methods in Subchapter A, including the Area of Review and Corrective Action Standards, and all Construction Standards and Operating Requirements included in Subchapter D. Such a narrow application review is not supported by TCEQ Rules, TCEQ Instructions, or UEC’s own application which included information related to many requirements outside of Subchapter G.

The Commission asked the ALJs to determine whether the Draft Permits provide for adequate monitoring of migration of injected fluids. The timing is appropriate because UEC must demonstrate that USDWs will be protected from the proposed injection wells before TCEQ can issue the injection well permits. The ALJs correctly determined that the site-specific evidence of potential for fluid movement makes the monitoring program in the Draft Permit inadequate and TCEQ Rule 331.64(h) requires that ambient monitoring be included.

²³ UEC Exceptions at p. 27-28.

VIII. UEC MUST TAKE CORRECTIVE ACTION TO PREVENT FLUID MIGRATION THROUGH NEARBY WELLS BEFORE TCEQ CAN ISSUE THE CLASS I INJECTION WELL PERMITS

The ED argues that the appropriate corrective action necessary for the Gleisner No. 2 and Hausman No. 2 wells can be determined after TCEQ issues UEC's Class I injection well permits.²⁴ This is contrary to TCEQ Rule 331.44(b) which states as follows:

(b) Additional corrective action standards for Class I wells.

(1) For such wells within the area of review which are in the opinion of the executive director inadequately constructed, completed, plugged, or abandoned, or for which plugging or completion information is unavailable, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluids into or between USDWs or freshwater aquifers. Where such a plan is adequate, ***the commission shall incorporate it into the permit as a condition.*** Where the executive director's review of an application indicates that the permittee's plan is inadequate the executive director shall:

- (A) require the applicant to revise the plan;
- (B) prescribe a plan for corrective action as a condition of the permit; or
- (C) deny the application.²⁵

TCEQ Rule 331.44(b) requires that corrective actions for inadequately plugged wells, or for which plugging information is unavailable, within the AOR be ***incorporated as a permit condition*** to the Draft Permit. Determining appropriate corrective actions, therefore, cannot wait until after the permits are issued.

UEC failed to demonstrate the Gleisner No. 2 and Hausman No. 2 wells are adequately plugged. The Draft Permits do not include a condition that UEC take corrective action to prevent fluid migration through those two potential pathways prior to drilling or operating the Class I

²⁴ ED Exceptions at p. 9-11.

²⁵ 30 Tex. Admin. Code § 331.44(b) (emphasis added).

injection wells. TCEQ can require changes to operating parameters or that UEC seek permission to enter property and re-plug the wells.²⁶ Until the application is remanded to include the appropriate corrective actions, UEC has not demonstrated USDWs are protected from the proposed injection wells and its application is not in compliance with 30 Tex. Admin. Code § 331.44(b) or the numerous other TCEQ regulations that require UEC to prove USDWs are protected before the permits can be issued.

IX. APPLICATION SHOULD BE REMANDED TO TCEQ STAFF TO REOPEN THE TECHNICAL REVIEW, NOT SENT BACK TO SOAH

The ED proposes reopening the record for further SOAH proceedings if additional information is needed for the Commission to make a decision on the application. This would impose a substantial financial burden on the District and its taxpaying constituents. Remanding to SOAH provides UEC an incredibly unwarranted *third* opportunity to do what it should have done in its initial application and when presenting its case at SOAH, and it circumvents TCEQ's technical review for the significant amount of new information UEC must obtain and submit.

The Commissioners have authority to take any appropriate action in response to a deficient permit application.²⁷ Instead of recommending the Commission deny UEC's applications, the ALJs reasonably recommended the Commission remand the application to allow UEC its third chance to properly satisfy the requirements of the permitting process. If remanding the application to TCEQ staff is not preferable, then the Commissioners must deny the application for UEC's failure prove: (1) it adequately described the local geology to prevent fluid migration through nearby artificial penetrations within the COI; (2) faults within the AOR are not sufficiently transmissive to allow fluid migration; (3) the location of the proposed injection wells is adequate

²⁶ UEC Exceptions at p. 9.

²⁷ 30 Tex. Admin. Code § 50.117(a).

given the artificial penetrations and faults that are potential pathways for fluid migration; and (4) the monitoring program prescribed in the Draft Permit is adequate without ambient monitoring to detect fluid migration.

X. CONCLUSION

The ALJs appropriately recommend remanding UEC's application and Draft Permit to the ED for reopening of the technical review. This will provide UEC another opportunity to conduct the required analysis to determine whether its proposed disposal wells comply with the numerous statutory and regulatory requirements that underground sources of drinking water—especially freshwater aquifers—are protected *before* the permits are issued. On remand, UEC can also submit a monitoring program that includes ambient monitoring to detect fluid movement outside of the injection zone that the ALJs correctly recommend is a required permit condition in the event UEC demonstrates its application complies with all legal requirements.

Respectfully submitted,

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**ATTORNEYS FOR GOLIAD COUNTY
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CERTIFICATE OF SERVICE

I certify that on May 10, 2024, Protestant Goliad County Groundwater Conservation District's Exceptions to the Proposal for Decision was filed with the State Office of Administrative Hearings and the Chief Clerk of the Texas Commission on Environmental Quality, and a copy was sent to all persons listed on the attached mailing list via electronic mail in accordance with the Texas Rules of Civil Procedure, TCEQ Rules and any Court order in this matter.

/s/ Adam M. Friedman

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