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To: Chairman Ken King and the Members of the House Committee on State Affairs
CC: Rep. Ana Hernandez, Rep. Rafael Anchia, Rep. Drew Darby, Rep. Yvonne Davis, Rep. Charlie Geren, Rep. Ryan Guillen, Rep. Lacey Hull, Rep. John W. McQueeney, Rep. Will Metcalf, Rep. Dade Phelan, Rep. Richard Peña Raymond, Rep. John T. Smithee, Rep. Senfronia Thompson, Rep. Chris Turner
Via email.

From: Rita Beving (rita.beving@gmail.com), Kamil Cook (kcook@citizen.org), and Adrian Shelley (ashelley@citizen.org) Public Citizen, 512-477-1155

Re: Data Center Interim Charge

Dear Chairman King and Members of the Committee:

Public Citizen appreciates the opportunity to offer these comments regarding the data center interim charge. We are concerned that the growth of data centers in Texas is unsustainable, that their demand on limited energy and water resources will harm consumers, and that they are often sited in or near communities that oppose them. Some of our recommendations include:

Financial:

- Eliminate the state sales and use tax exemption for data centers.
- Limit the use of local tax breaks and incentives or impose conditions on their use.

Water:

- Give local jurisdictions greater authority over water allocation.
- Water reporting to the Texas Water Development Board (TWDB) for large water users, including data centers.
- Require less water-intensive cooling technologies, use of reclaimed water, and other strategies to limit water demand.

Air and Energy:

- Ensure proper air permitting and public participation in the permitting process.
- Require more efficient, less polluting technology, such as Tier 4 diesel generators, especially in nonattainment areas.
- Forbid the use of backup power for transmission cost allocation avoidance, energy arbitrage, or any practice other than backup during energy emergencies.

Local:

- Offer local protections such as residential setbacks and noise protections.
- Limit data center placement to heavy industrial zones.

Introduction

Globally, there are more than 11,000 data centers. The U.S. has more than 4,000, controlling more than 43% of the global market. The U.S. has 8 times the volume of data centers as any other country.

Texas is second in the nation for data center development behind Virginia. Some industry reports suggest Texas could experience a 142% increase in data center development by 2028 and will soon outpace all states nationwide. There are more than 500 data centers in Texas, with Dalls-Fort Worth being the largest market in the state with more than 197 data centers. DFW is the second-largest market in the nation.

Some states are taking action to regulate or limit the growth of data centers. Fourteen states are currently developing data center regulations. Between April and June of 2025, 20 data center projects valued at \$98 billion in eleven states were blocked or delayed amid local opposition and state-level pushback. That amounts to two-thirds of the projects these eleven states were tracking.

Some Texas projects are facing financial difficulties.

In March 2026, Oracle and OpenAI canceled their plans to expand their flagship AI data center project in Abilene. The decision came as Oracle announced large-scale layoffs and cost-cutting measures tied to the financial pressure of rapid AI infrastructure investment. The project is now being taken over by Microsoft.

FERMI America, one of the largest data centers in the U.S., located in Amarillo, is now embroiled in a class-action lawsuit, allegedly for misleading investors. The 5000-acre, 11 GW Matador Project's only \$150 million tenant dropped out. The suit was announced in early January 2026. FERMI's stock, which opened near \$30 late last year, is now trading at \$4.80.

In November 2025, the RELLIS data center project in Bryan filed for Chapter 11 bankruptcy protection during its first year of construction, leaving Texas A&M University, the financing bank, and contractors on the hook after a financial partner backed out of the project.

It has already been suggested that the United States is experiencing an "AI bubble" that will eventually pop. The financial consequences of the collapse of the AI/data center industry would be deeply felt in Texas. Cities and counties would be left with stranded assets in the form of large warehouses and their attendant energy infrastructure. Many companies might go bankrupt and fold well before their ten-year tax abatements conclude.

Lawmakers could take steps to ensure that only credible companies are applying to build data centers in Texas. A developer who presented a plan that included verified power and water sources and property available for purchase would be better than most. We see a lot of speculative companies applying for permits and buying land for facilities they never intend to operate. Their plan is to sell their facilities to other AI/data companies. They have no interest in

developing goodwill with the communities they target. Lawmakers could take steps to end this practice by requiring permits and other applications to be made by end users, not speculators.

Data Center Tax Breaks Are Costing Texas Billions.

As recently reported by the [Texas Tribune](#), data centers cost Texas taxpayers more than a billion dollars in 2025, with another \$3.2 billion expected in the next two years.

This lost revenue is due to the state sales and use tax exemption for [qualifying data centers](#). This state tax break was introduced to encourage data centers to locate in Texas. We now have more data center proposals than the state can possibly bear, so there is no longer a need for the tax break. We recommend eliminating the states' sales and use tax exemption for data centers, which is found at Tax Code Secs. 151.359 and 151.3595.

There are several other local tax breaks or incentives that data centers also take advantage of. These include:

- The Jobs, Energy, Technology and Innovation Act (JETI) tax breaks from school boards. Government Code Ch. 403, Subchapter T.
- The Property Redevelopment and Tax Abatement Act tax breaks from cities and counties. Tax Code Ch. 312.
- Local Development Agreement incentives. Local Government Code Chs. 380 and 381.

We believe the legislature should consider limiting access to these programs.

Another suggestion is to forbid companies from entering nondisclosure agreements (NDAs) with local government entities if they want to take advantage of local incentives. As data center projects become locally unpopular, we are seeing more data center companies use NDAs to limit the public's knowledge and opportunity for opposition. These NDAs are intended to frustrate public participation. A company that employs them should not be getting local tax breaks or other economic incentives.

Texas is Running out of Water, and Data Centers aren't Helping.

Large data centers can consume as much as 5 million gallons a day, according to the Environmental and Energy Study Institute.

[The Houston Advanced Research Center](#) estimates that data centers will have used 25 billion gallons of water by the end of 2025. By 2030, this use could increase to 2.7% of total annual water use in Texas. That equates to the water use of 1.3 million households.

Servers must be cooled in these massive facilities. Data centers typically use either water- or air-based cooling systems. Water-based systems that are reliant on evaporative cooling use less electricity than other systems, while air-based systems consume less water but require more power.

Water for data centers can come from the following sources:

- Groundwater Districts: Applicant can secure an allocation for a permit to dig their own groundwater wells.
- Water District or Municipal Utility District (MUD): An applicant can apply for a permit for a surface water allocation.
- Municipal Water: An applicant can apply directly to a municipality for water.
- River Authority: A river authority can allocate a permit for a volume of acre feet of water.
- Existing Water Allocation Holder: An existing entity not utilizing its contracted water allocation may amend its allocation to contract to another end user. This is usually done with a river authority.

In the state's 2022 water plan, the TWDB has stated we could face a severe water shortage by 2030.

Water supplies are expected to decline by 18% between 2020-2070 from 16.7 to 13.8 million-acre feet. This is mainly due to the depletion of our aquifers.

According to the Texas State Water Plan, the state is already facing a 4.8 million-acre-foot shortfall. The TWDB has not included projected data center demand growth. This was verified during a Texas House Natural Resources Committee hearing on February 10, 2026.

Data Centers May Not Be Getting the Right Air Permits

Data centers with onsite power generation in the form of gas turbines or diesel generators need air pollution permits issued by the Texas Commission on Environmental Quality (TCEQ). Some facilities may emit a *de minimis* amount of pollution and not require a permit. Other facilities will emit enough to be considered only a "minor source" of pollution. These will be able to get registrations permits-by-rule quickly through an administrative process that does not involve the public. The largest facilities will need major source air permits, which include public opportunities, including notice and comment, public meetings, and the opportunity for a contested case hearing.

Through our research of permit and permit applications by data centers, we are concerned that some facilities are under permitted. If a company can avoid a major source designation, it can get permitted more quickly without public involvement. There is a significant incentive to do this by undercounting potential emissions, understating the project's true scale, or segmenting the project. We don't believe the TCEQ is equipped to determine when data center developers are under-permitting their facilities.

We have seen data center developers request permit-by-rule registrations with emissions limits right under the federal major source threshold. Often, their representation that they are a minor source is based on a stated maximum number of operating hours. If the backup power runs for too long, these facilities have the potential to emit pollutants beyond the threshold for public notice. Registrations and permits-by-rule do not require analysis or confirmation by TCEQ staff.

We are concerned that facilities might regularly exceed their permit limits without being detected.

We know that data centers generally do not act like other large loads that respond to price signals and curtail load when ERCOT demands. Additionally, we know that even being without power for a few minutes can be incredibly undesirable for a data center. We are concerned that future grid emergencies will cause data centers to run their backup power as long as needed to stay online, even if that means going beyond their emissions limits. We believe this scenario could happen, especially since our grid is coming under increasing strain from the growing demand of data centers interconnecting.

We understand that to a data center developer, the penalties for breaking their emissions limits are a slap on the wrist compared to the penalty of going offline and not providing AI or cloud services. To fenceline communities, though, the threat of data centers violating their emissions limits means exposure to toxic chemicals in violation of the law and their rights as Texans. We believe that there needs to be a policy in place to ensure that the average Texan is protected from the dangers that under-permitted backup generators for data centers pose to them.

A few possible policy solutions:

- Create a new permit class for data centers with significant penalties for exceeding limits.
- Create a new permit/registration for data centers with public notice required at a lower emissions level for NOx, VOCs, Particulate Matter, etc., than the existing permit-by-rule limits.
- Require minor permit holders to submit proof of hours of operation of their backup generation and calculations of emissions.

Local concerns with data center growth.

As advocates working in the public interest, we have been involved in a number of data center opposition “site fights” in communities across Texas. It is true that there are already hundreds of data centers in Texas, and that many of them can and do continue operating without complaints from their neighbors.

But it is also true that communities are increasingly opposing new data center projects. In speaking to communities, we have heard many of the concerns we voiced above, including water availability, backup power and transmission infrastructure, and energy prices. There are other local concerns that the Legislature could address.

Residential setbacks – a reasonable residential setback might be appropriate. Concrete crushers, for example, are required to be at least 440 yards from homes. TX Health & Safety Code § 382.065.

Noise protections that include infrasound – Many people who live near data centers complain about noise. See: <https://www.eesi.org/articles/view/communities-are-raising-noise-pollution-concernsabout-data-centers>. Data centers can also emit low-frequency “infrasound” that, while it is below the range of human hearing, still has negative health and quality of life impacts. Noise

ordinances are generally local and enforceable by local law enforcement. Many communities have found law enforcement agencies unable or unwilling to enforce existing ordinances. And no ordinances cover infrasound. We recommend creating a model ordinance that includes infrasound and limits data centers to a reasonable decibel level, such as 65 dB.