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Records: public folder of TCEQ records, map of the sites

Lame-Duck Data Center Rush: Texas Regulator Restarts Data Center Permitting, Without Telling the Public

TCEQ approves 3,500 megawatts of data center gas plant permits in a single day, quietly reactivates 17 suspended construction approvals

AUSTIN, Texas — On Monday, the Texas Commission on Environmental Quality (TCEQ) resumed permitting for data centers across Texas, approving air permits for three data center gas plants that same day, through a process that requires no public notice or opportunity for comment. The gas plants have a combined generating capacity of 3,500 megawatts, about 4 percent of Texas's record power demand set in July and enough to serve roughly 875,000 Texas homes during peak hours.

TCEQ has also reactivated 17 suspended construction approvals for data centers. A snapshot of the TCEQ portal taken on Nov. 2, the morning before the election, showed all 17 still suspended; by Nov. 13, all 17 were active again with no notice or explanation for the public. The issuance of these permits seems to mark a quiet, abrupt end to Gov. Greg Abbott's Sept. 21 pause, which the state's grid operator, the Electric Reliability Council of Texas (ERCOT), said could last through Dec. 10.

"Governor Abbott's pause was flimsy at best, and TCEQ's actions raise serious questions about whether it serves the people of Texas or the data center industry. From San Marcos to Brownsville, ordinary Texans have made it clear that they don't want data centers in their communities, but TCEQ is rushing dirty power plants through anyway, with no explanation to the public. This process has lacked transparency and regulatory scrutiny of this powerful industry. We want an investigation into how this pause ended, and we want these permits overturned," said **Sam Law, a researcher at FracTracker Alliance**.

TCEQ told the Texas Tribune and Politico that it "has resumed its normal permit review process." According to the Tribune, the governor's office notified TCEQ on Friday that ERCOT had finished gathering information on community impacts from data centers, but TCEQ has failed to share those results with communities or to detail how the agency would incorporate the

findings into permitting decisions. However, on Tuesday, Politico reported that ERCOT said it is still working to complete the audit. Neither TCEQ nor the Governor's office has posted a public notice that the pause is over.

"It's hard not to put two and two together and suspect that this activity is related to a new incoming governor who has pledged to protect communities from data centers. Texans know how to read a calendar, and they see a lame-duck period when the data center industry is rushing to get in while it can, with the TCEQ apparently willing to go along," said Kathryn Guerra, TCEQ Watchdog Campaign Director at Public Citizen. "The three TCEQ commissioners who have decided their power outweighs the will of the people should follow the governor out the door and resign immediately."

The three data center gas plants that TCEQ approved on Monday are SpaceX's Boca Chica plant outside Brownsville, the CloudBurst power plant outside San Marcos, and Atlas Energy Solutions' plant in Shackelford County, northeast of Abilene. Notably, two of the plants are near communities that have said no to data centers: San Marcos, the first city in Texas to ban them, and Brownsville, which passed a 90-day moratorium on November 4.

"Our Brownsville community has made it clear that we vehemently oppose the SpaceX data center; we rallied our community to deny a multi-million-dollar tax break for this toxic project just yesterday," said **Bekah Hinojosa, Brownsville-based organizer with the South Texas Environmental Justice Network**. "We demand that Texas public officials strike down this permit SpaceX is using to build a data center that will pollute our low-income Latine community. SpaceX already has a history of polluting our community and lying about it. This SpaceX data center project is another example of this corporation's trickery. SpaceX put this toxic data center next to our poor neighborhoods by first bullying the City into deannexing 444 acres just before we passed a moratorium on data centers."

Despite their massive size, all three plants were approved through a standard permit registration, which TCEQ grants without public notice as long as the developer's emissions calculations stay under the major source threshold, 250 tons a year of any one pollutant for these plants. Major sources require public notice, a 30-day comment period, the chance to ask for public hearings, and stricter scrutiny. The plants will still need federal Title V operating permits because each can emit more than 100 tons of a pollutant a year, but those permits add no new pollution limits, and a plant can start running as soon as it applies. All of the gas plant approvals TCEQ issued on Monday are in this spreadsheet.

Gas power plants are a major source of air pollution, including climate-warming greenhouse gas emissions. They are also sources of nitrogen oxides (NOx) and fine particulate matter, which the EPA links to asthma, heart attacks and premature death. Together, the three data center gas plants are authorized to emit about 670 tons of nitrogen oxides a year. These power plants will largely rely on fracked gas, a water-intensive form of energy extraction in which chemicals are injected into the ground. The EPA found in 2016 that fracking can impact drinking water and that some of the chemicals used in fracking are known to be hazardous to human health.

The largest: CloudBurst, outside San Marcos

The largest gas plant approved is in Guadalupe County, just south of San Marcos. TCEQ's review lists the plant at 1,605 megawatts, including 42 gas turbines and a natural gas fuel cell system; only four gas plants operating in Texas are larger, according to the U.S. Energy Information Administration. The permit is in Evolve Energy's name, but the plant will power the nearby CloudBurst data center. The two companies share a chief executive, Tye Johnson, and TCEQ's registry lists Evolve as an operator of the CloudBurst site. Using the emissions Evolve calculated and submitted, the permit caps the turbines at 232.45 tons of nitrogen oxides a year, 245.26 with the fuel cells, under the 250-ton line, so the plant avoided the review that would require public notice and let neighbors ask for hearings.

"To have spent the past almost two years relentlessly fighting to protect our ranches out here, which resulted in banning data centers in San Marcos, only to still be threatened by one or even two just half a mile down the road is terrifying," said **Torrie Martin, a San Marcos rancher and member of the Data Center Action Coalition** who lives near the proposed power plant. "We've been lied to and blatantly ignored so many times during this ongoing process. There has been no transparency. The governor claims to have halted all permits for data centers, but to see that permits are still being approved is a blatant showing of disrespect towards communities. To continue to live in a perpetual state of dread is torture."

SpaceX at Boca Chica

SpaceX's permit for its Boca Chica plant covers 43 gas turbines with a total generating capacity of 1,456 megawatts, also one of the largest gas power plants in Texas, and authorizes 248.86 tons of nitrogen oxides a year, 1.14 tons under the major source line. Today, SpaceX requested expedited review of another standard permit for more gas generation at the same site; together, the two would likely put the plant over the major source line. The plant is being built on land that was removed from Brownsville's city limits earlier this year and later annexed by the city of Starbase.

On Nov. 13, before the permit was issued, FracTracker filed a complaint with the TCEQ citing satellite imagery, social media photos and aerial footage that appear to show the power plant already under construction. TCEQ has not responded beyond an automatic acknowledgment. If it is found that SpaceX engaged in unpermitted construction, TCEQ can fine the company up to $25,000 a day under the Texas Water Code.

Background

On October 19, FracTracker published a report, alongside Public Citizen's findings, showing that TCEQ had quietly continued to issue and move forward with a variety of data center permits. TCEQ suspended the 17 authorizations in letters dated Oct. 19 and 21, telling each company the suspension would last "pending the ongoing state agency audit of data centers." On October 23, Governor Abbott issued a letter to TCEQ reminding the agency the pause was still in effect.

Records: the spreadsheet of approved gas plants, TCEQ's letters, the saved TCEQ pages and FracTracker's SpaceX complaint are in this folder. There is also a map of the sites.

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FracTracker Alliance is a nonprofit organization that maps, analyzes, and communicates the risks of the oil and gas industry and related industries, like data centers, LNG export facilities and petrochemical facilities, to advance just energy alternatives that protect public health, natural resources, and the climate. fractracker.org

Public Citizen is a nonprofit consumer advocacy organization that champions the public interest in the halls of power. Public Citizen defends democracy, resists corporate power, and fights to ensure that government works for the people – not big corporations. Founded in 1971, Public Citizen has supporters throughout the country, including 60,000 in Texas.