

CLIENT ALERT

Texas Governor Halts Data Center Permits Pending ERCOT Audit: What Developers, Investors, and Lenders Need to Know

October 5, 2026

I. Introduction / Executive Summary

Through a series of escalating executive actions this summer, Texas Governor Greg Abbott has imposed sweeping new requirements on data center development, affecting both the feasibility and timing of ongoing projects. Alongside these measures, the state has begun enforcing water-use reporting requirements, investigating noncompliant projects, and collecting broader project information through Request for Information (**RFI**) processes by the Electric Reliability Council of Texas (**ERCOT**). Each of these actions carries significant implications for developers, investors, lenders, and other stakeholders with interests in Texas energy infrastructure, real estate, and data center development.

The executive actions began on August 3, 2026, when Governor Abbott directed the Public Utility Commission of Texas (**PUCT**) and ERCOT to conduct a comprehensive audit of all data centers advancing through ERCOT's interconnection process. The Governor expanded these efforts on September 14, 2026, directing the Texas Water Development Board (**TWDB**) to compel data centers to comply with water-use reporting requirements and to partner with ERCOT on the audit, and again on September 21, 2026, when he directed the Texas Commission on

Environmental Quality (**TCEQ**) to halt all permits sought by data centers until ERCOT completes its audit. Days later, on September 24, 2026, Texas Attorney General Ken Paxton announced an investigation into hundreds of data center developments that have not responded to the TWDB water-use survey. ERCOT has also issued an RFI requiring covered developers to submit information by October 12, 2026.

II. Timeline

March 1, 2026. Responses to TWDB's Calendar Year 2025 water-use survey were due.

June 10, 2026. Governor Abbott issued an earlier letter and directive addressing concerns about data center development.

August 3, 2026. Governor Abbott directed PUCT and ERCOT to conduct a comprehensive audit of data centers advancing through ERCOT's interconnection process.

September 14, 2026. Governor Abbott directed TWDB to enforce water-use reporting requirements and partner with ERCOT on the audit. ERCOT posted its RFI User Guide and Attestation Form.

September 18, 2026. ERCOT posted the RFI Questions v1.0.

September 21, 2026. Governor Abbott directed TCEQ to halt permits sought by data center projects until ERCOT completes its audit.

September 24, 2026. Attorney General Ken Paxton announced an investigation into hundreds of data center developments that have not responded to the TWDB water-use survey.

October 12, 2026. Responses to ERCOT's RFI are due.

October 14, 2026¹. TWDB's initial 30-day update to the Governor is due.

October 19, 2026. TCEQ's compliance update to the Governor's office is due.

On or before December 10, 2026. ERCOT and PUCT expect to publish their report on the audit and RFI responses.

Next legislative session. Governor Abbott has said he will seek legislation eliminating financial incentives for data centers.

III. Background - Initial Directive: Comprehensive Data Center Audit

¹ This date is approximate based on the 30-day response timeline provided by Governor Abbott in his initial September 14, 2026 directive.

On August 3, 2026, Governor Abbott issued a press release and a letter to Thomas Gleeson, Chairman of PUCT, and Pablo Vegas, President & CEO of ERCOT, directing those agencies to “conduct a comprehensive verification and audit of all data centers advancing through ERCOT’s interconnection process before any additional data centers are approved to move forward.”

The Governor indicated that he understands the importance of supporting the jobs and economic activity associated with technological innovation but framed the audit as a necessary investigation for the state to protect four specific interests of its citizen: (i) Texans’ safety and quality of life, (ii) affordable and reliable electricity, (iii) protection of community water supplies, and (iv) continued economic opportunity.

The letter noted that ERCOT was considering approximately 474 gigawatts of requests to connect to the Texas grid, more than five times Texas’s record peak electricity demand, with about 90% of those new power requests coming from data centers. The Governor warned that this level of growth could threaten grid reliability and stability, citing incomplete responses to a PUCT survey on water and power use as well as concerns raised in legislative hearings and public meetings.

Scope of Information Requested

Building on a prior June 10 directive, the Governor directed PUCT and ERCOT to obtain the information from each data center project in five areas:

1. **Financial self-sufficiency.** Whether data centers are paying their own way rather than relying on the state for assistance, including state and local tax incentives, grants, abatements, and other public financial assistance received or expected.
2. **Power sourcing.** Whether data centers will provide their own power or rely on the ERCOT grid, including projected annual and peak electricity use, on-site generation efforts, generation type, and other measures to reduce grid demand.
3. **Water usage.** Whether data centers will bring and reuse their own water rather than drawing from local supplies, including projected annual and peak water use, anticipated water sources, and proposed cooling technology (air-cooled, closed-loop, or other water-efficient systems).
4. **Community impact mitigation.** Whether data centers are taking measures to limit their effects on neighboring property owners and communities, such as noise mitigation, light controls, setbacks, traffic improvements, and emergency response coordination.
5. **Ownership disclosure.** Ownership and controlling interests in each project.

The Governor directed the agencies to deny any project that fails to comply with the verification and audit process, summarizing the rationale behind the directive by saying: “Texans must come first.”

IV. TWDB Water-Use Reporting and Enforcement

In his September 14 letter, Governor Abbott said major water users, including data centers, appear to have committed civil and criminal violations by failing to provide TWDB with water-use information required by the Texas Water Code. Because TWDB is responsible for developing the state water plan under Texas Water Code §§ 6.011–6.012, the Governor emphasized that the agency cannot perform that task without detailed information about existing and anticipated water consumption across Texas. Responses to the Calendar Year 2025 survey were due March 1, 2026, and failure to comply constitutes a criminal offense under state law and renders the noncompliant party ineligible for TCEQ permits under Chapter 11 of the Water Code.

TWDB must enforce these remedies against offending data centers, including by referring violations to the appropriate County or District Attorney and informing TCEQ for possible permit disqualification. The Governor directed TWDB to partner with ERCOT on the audit, which will address water consumption, water sources, and water-efficient technologies. Any failure to answer the audit's water questions triggers TWDB's independent enforcement authority. TWDB owes the Governor an initial update by approximately October 14, 2026, with further updates to follow.

On September 24, 2026, Texas Attorney General Ken Paxton announced an investigation into hundreds of Texas data center developments that have not responded to TWDB's water-use survey. The initial investigation covers non-compliant projects across 18 Texas counties.

V. New Development - TCEQ Directive to Halt Data Center Permits

What Is the TCEQ?

TCEQ is Texas's environmental regulatory agency. It handles environmental permitting in areas that can affect data center projects, including air quality permits for on-site backup or primary generation, water-related authorizations, and other environmental approvals. Projects may need one or more TCEQ permits before construction or operations begin.

The Governor's Directive

On September 21, 2026, Governor Abbott issued a press release and sent a letter to TCEQ Executive Director Kelly Keel. He directed TCEQ to halt permits sought by data centers. The directive linked that pause to the information being collected through the PUCT, ERCOT, and TWDB audits. TCEQ must report to the Governor's office on its compliance by October 19, 2026.

Separately, the September 14 TWDB directive creates a water-use compliance gate: a person who fails to timely complete and return the TWDB survey is ineligible for Chapter 11 TCEQ permits, permit amendments, or permit renewals. The Governor's letter directs TCEQ to pause the issuance of all permits related to data center projects

until ERCOT completes its review, explaining that PUCT, ERCOT, and TWDB need the requested information to make informed decisions before any state agency moves forward with related regulatory approvals. The accompanying press release added that data centers must pay their own electrical infrastructure costs, protect the grid and water supplies, complete the ERCOT and TWDB audits, and meet the other requirements described below before TCEQ issues permits sought by data center projects.

Scope and Potential Impact

The directive is broad on its face, applying to every permit sought by or related to a data center project without identifying a specific permit type, geographic limit, or fixed end date. Instead, the pause is tied to ERCOT's completion of its audit, which ERCOT has indicated will result in a report published on or before December 10, 2026. Beyond the permit pause, the press release and letter include additional requirements for data center projects, including the following:

- Data centers must cover all electrical infrastructure costs.
- Data centers must result in lower residential electrical bills.
- Data centers must complete the ERCOT and TWDB audits.
- Data centers must not use water needed by local communities.
- Data centers must report electricity and water usage.
- Data centers must comply with setback requirements intended to protect the communities where they operate.

The Governor also said he plans to work with the Legislature in the next session to eliminate financial incentives for data centers, explaining that TCEQ would have an important role if those laws are enacted.

VI. ERCOT RFI and Audit Compliance

Who Must Respond and What Is Requested?

ERCOT issued a Request for Information on Data Center State and Community Impacts to developers of data centers of 25 MW or more pursuing interconnection to the ERCOT System. The RFI covers public financial assistance and tax benefits, grid dependency and on-site generation, water sources and consumption, cooling technologies, noise, light, and traffic impacts, and ownership and controlling interests. ERCOT coordinated with PUCT and TWDB on the water-related questions, with TWDB's Executive Administrator authorizing ERCOT to issue those questions on TWDB's behalf.

Responses are due October 12, 2026, and developers should treat this deadline and completion of the broader ERCOT and TWDB audit requirements as core project milestones. ERCOT and PUCT will analyze the responses and expect to publish their report on or before December 10, 2026, with TWDB's initial update to the Governor due around October 14, 2026, and TCEQ's compliance update due October 19, 2026.

Consequences of Noncompliance

The TCEQ permit halt is tied to ERCOT's completion of its review. Projects that fail to complete the audit may be denied interconnection. Failure to answer the RFI's water questions may trigger TWDB enforcement and make a person ineligible for TCEQ Chapter 11 permits, permit amendments, or permit renewals.

VII. Key Takeaways and Implications

The directives affect projects and transactions at several points in the data center life cycle. The considerations below focus on development, energy transactions, M&A diligence, real estate, and financing.

Data Center Development

- Projects requiring any TCEQ permits, including air quality permits for on-site generation, water authorizations, and other environmental approvals, face an indefinite pause with no specified end date. Developers should assess which of their projects require TCEQ permits and evaluate schedule and budget exposure.
- Projects in ERCOT's interconnection queue are subject to the comprehensive audit and may not advance until the audit is completed. Developers should prepare to provide the categories of information outlined in the Governor's August 3, 2026 letter.
- The October 19, 2026 TCEQ compliance update deadline is a key date to monitor for further clarity on the scope and implementation of the permit halt.
- Developers of data centers of 25 MW or more pursuing ERCOT interconnection must submit the RFI response by October 12, 2026. See Section VI; nonresponse risks interconnection denial and may trigger TWDB enforcement and TCEQ permit ineligibility.

Energy Transactions

- The interconnection audit effectively gates new data center connections to the Texas grid, creating uncertainty for power purchase agreements, generation asset transactions, and related energy contracts.
- The emphasis on self-supplied power and on-site generation may accelerate interest in behind-the-meter generation solutions, but those projects themselves may require TCEQ air permits now subject to the halt.

- The RFI asks about grid dependency and on-site generation; the ERCOT and PUCT report due on or before December 10, 2026 may inform interconnection. See Section VI.

M&A Due Diligence

- Acquirers of data center assets or platforms with Texas exposure should incorporate the audit information categories into their diligence frameworks, including state and local financial incentives, projected power and water consumption, cooling technology, community impact mitigation measures, and ownership and controlling interests.
- The ownership disclosure requirement is particularly relevant for transactions involving complex fund structures, joint ventures, or foreign ownership, as the audit requires “information detailing the ownership and controlling interests in the project.”
- The Governor’s stated intention to work with the Legislature to eliminate financial incentives for data centers in the next session introduces legislative risk that should be factored into valuation models and investment theses for incentive-dependent projects.
- Acquirers of data center assets should confirm that a target submits the RFI response and attestation by October 12, 2026 and remains current on TWDB surveys. See Section VI.

Real Estate Acquisitions

- Acquirers of sites intended for data center development should evaluate water supply availability, setback requirements, and community impact considerations, all of which are now subject to heightened regulatory scrutiny.
- The permitting halt may affect the timeline and feasibility of planned data center construction on acquired or optioned sites, with implications for purchase agreement milestones, option exercise periods, and related contingencies.
- The RFI’s questions on water sources, cooling, noise, light, and traffic bear on-site suitability. See Section VI.

Structured Finance and Lending

- Lenders to data center projects in Texas should consider whether conditions precedent, base load eligibility criteria, and milestone-based draw schedules adequately account for permitting delays of uncertain duration.
- Existing credit agreements should be reviewed for the adequacy of permitting representations, regulatory compliance covenants, and audit cooperation obligations.

- The potential elimination of financial incentives in the next legislative session may affect project-level cash flow projections that underpin credit underwriting, and lenders should consider whether incentive-dependent revenue is adequately sensitized.
- Delay and *force majeure* provisions should be evaluated in light of the open-ended nature of the permit halt.

VIII. Willkie's Data Center Team

Willkie Farr & Gallagher LLP advises developers, investors, lenders, and other stakeholders on data center and digital infrastructure matters. Our lawyers work across energy, real estate, mergers and acquisitions, banking and finance to address the regulatory, transactional, and financing issues these projects present.

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