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August 17, 2026

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Terrence Huelskamp, County Counselor  
205 West Central  
El Dorado, Kansas 67042  
Via Email: [thuelskamp@bucoks.com](mailto:thuelskamp@bucoks.com)

Re: County Draft Data Center Zoning Rules and Regulations

Terry:

I am writing in my capacity as General Counsel for Butler Rural Electric Cooperative Association, Inc. ("BREC").

In May we met with your County Zoning Administrator, Toby Stewart, and County Manager, Will Johnson, regarding two mini-data centers to be served at BREC substations. Conditional Use Permits are already in place at both substations, together with solar installations. BREC has sufficient capacity to serve both projects at no more than 10 megawatts each, without adverse effect on existing members.

The two sites are:

1. **Site 1 — DeGraff Substation**, 1240 NW 110th Street, at NW 110th Street and Highway 77. Site area **3.75 acres** per survey of Chad R. Abbott, P.S. #1340, dated June 18, 2026.
2. **Site 2 — Pony Meadows Substation**, 16234 SW 140th Street, Rose Hill. Site area **4.03 acres** per the same survey.

Neither site is located within the Tallgrass Heartland. Both are situated on ground owned by BREC and already in utility use under existing Conditional Use Permits, and both will be served directly from the existing substation on that ground.

The following points bear on the County's consideration:

1. **Neither facility uses water for cooling.** Both use dry air cooling. There are no evaporative cooling towers and no process water demand.

2. **Both facilities are designed to operate within the sound limits contemplated by the draft regulations.** The operator's equipment selection — air-cooled dry coolers with variable-speed fans, acoustical louvers and vibration isolation — is directed at that result, and compliance will be confirmed through the pre-construction and post-construction noise studies the draft regulations require.
3. **Both sites are buffered by agricultural ground,** and both are sited on property already in utility use under existing Conditional Use Permits.
4. **BREC has sufficient electric capacity to serve both sites from its existing substations.** Current members will not be adversely affected. The added load is expected to improve system load factor, which benefits BREC's membership. [Ray — confirm this is supportable before it goes in.]

BREC agreed not to file amendments to its existing Conditional Use Permits until the County adopted its new Rules and Regulations. Those applications have been on hold since May. We appreciate the County's work on the draft and offer the following requests.

### Requests

**Request 1. Create a defined classification for substation-sited modular facilities.** When we met in May, it was BREC's understanding that facilities of this scale, sited on existing utility property under existing permits, would not be subject to the full application requirements being drafted for large-campus data centers. The current draft does not address that distinction.

We understand you advised the Planning Board on July 28 that you intend to delete the demand/capacity column and define classifications by building square footage and acreage. Rather than removing the power ceiling from the Edge/Micro definition, which would leave that classification without any load limit, we suggest the County add a separate tier. For example:

*"Substation-Sited Modular Data Center: a modular or container-based data center of not more than [10] megawatts of connected demand, occupying not more than [5] acres, located on property owned or controlled by an electric public utility or rural electric cooperative and served directly from an existing substation on that property."*

A tier of this kind lets the County apply scaled requirements to facilities of this size and setting without weakening the standards that apply to large campuses. It also gives the County a defensible basis for treating these two projects differently, which simply deleting a load limit would not.

**Request 2. Section 4(f)(3) — define “Edge/Micro” and “Modular/Container.”** Both terms appear in Section 4(f)(3). Defined as up to 10 MW rather than as 1 MW.

**Request 3. Section 9(a) — Project Exclusion Area.** We request that the provision be qualified to read “unless exempt,” or that it expressly exclude an amendment to an existing Conditional Use Permit for a facility sited on electric cooperative substation property. As drafted, the exclusion area would prevent development on ground already permitted and already in utility use.

**Request 4. Section 10(a)(3)(B) — 1,000-foot setback from noise-sensitive receptors.** We do not object to a setback standard. We ask that it be made performance-based rather than absolute. Specifically, we request that the required separation be reducible where the applicant demonstrates, through the pre-construction noise study the regulations already require, that operational sound levels at the affected receptor will comply with the limits in Section 10(c).

A fixed 1,000-foot separation regulates distance as a proxy for sound. Where an applicant can show the sound limit itself is met at a shorter distance, the County’s objective is satisfied directly. We note candidly that the Pony Meadows site has residences within 1,000 feet, which is why we raise the point — but the reason we raise it does not make the principle less sound, and a performance alternative would apply evenhandedly to any applicant.

**Request 5. Scaled setbacks generally.** Setbacks calibrated to large-campus development are disproportionate when applied to a facility of three to four acres. We request that whatever classification structure is adopted include setback standards scaled to each class.

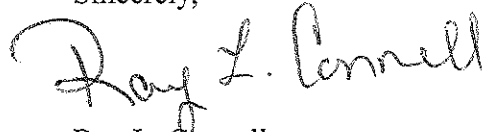
**Request 6. Section 5(d) — Required Community Meeting.** Rather than seek a waiver, BREC will hold a community meeting for each site. We would ask only that, for an amendment to an existing Conditional Use Permit on utility property, the meeting requirement be satisfied by a single neighborhood meeting rather than the full sequence contemplated for a new large-scale application.

**Request 7. Section 10(c) — Noise Study, Standards and Measurement.** The County’s revision to this section is a significant improvement, and we support the approach it now takes. If the classification relief requested above is adopted, these projects may not reach this section. **In the alternative**, and for the benefit of the regulation generally, we attach as Exhibit A suggested clarifying language addressing several provisions that we believe will prove difficult to administer as written — principally the “any increase” standard in subsection (5), the inconsistent use of “Property Boundary” and “Project Boundary,” and the sixty-day mitigation and re-test period.

Terry, thank you for your attention to these requests, and for the work you have put into preparing the new Rules and Regulations. BREC supports the County adopting a clear and administrable framework for these facilities. Our aim is to see that the framework accounts for small, utility-sited projects of the kind described here, which differ in scale and setting from the large campuses that have driven much of the discussion.

I am available at your convenience to discuss any of the foregoing.

Sincerely,

A handwritten signature in dark ink, reading "Ray L. Connell". The signature is fluid and cursive, with the first name "Ray" being more prominent and the last name "Connell" following in a similar style.

Ray L. Connell  
General Counsel, Butler Rural  
Electric Cooperative

RLC/ma

Enclosure: Exhibit A — Suggested Language, Section 10(c)

cc: Kevin Brownlee, CEO, Butler Rural Electric Cooperative

## EXHIBIT “A”

### SUGGESTED CLARIFYING LANGUAGE — BUTLER COUNTY DATA CENTER CUP REGULATIONS

**To:** Terrence Huelskamp, County Counselor

**From:** Ray L. Connell, General Counsel, Butler Rural Electric Cooperative

**Date:** August 17, 2026

**Re:** Section 10(c) (Noise), 10(d) (Vibration), 10(h) (Thermal) — redline dated August 4, 2026

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The County’s revision of the noise provisions is a substantial improvement. Replacing the earlier one-third octave band and infrasound provisions with broadband dB(A) and dB(C) limits at the boundary produces a standard that acoustical consultants can measure consistently and that County staff can enforce. Requiring a pre-construction baseline study and referencing ANSI/IEC methods are both sound additions.

The suggestions below are offered in that spirit. Each is directed at making a provision administrable rather than at reducing the protection it affords. Items 1 and 2 concern provisions we believe cannot be applied as written; the remainder are clarifications.

#### 1. Section 10(c)(5) — the “any increase” standard cannot be satisfied by any facility.

**Problem.** Subsection (5) provides that where baseline ambient exceeds the maximum permitted level, the post-construction study must show that operations “do not materially increase” the baseline — and then provides that “any increase above the established baseline shall be deemed a violation.” Those two sentences are inconsistent, and the second cannot be met by any facility. Sound combines logarithmically: a source **20 dB below** ambient still raises the total by roughly 0.04 dB, and a source **10 dB below** ambient raises it by about 0.4 dB. No operating condition, however quiet, produces literally zero increase. The repeatability of field measurement is on the order of  $\pm 2$  dB, so a “violation” under this language would be indistinguishable from instrument tolerance.

The provision also produces a result the County may not intend. Because it applies only where existing ambient already exceeds the limits, a parcel in a noisier setting — fronting a state highway, for example — would be held to “no increase whatsoever,” while an identical facility in a quiet setting need only remain below the numeric limit. The stricter obligation attaches to the louder environment.

**Suggested language.** Replace the final sentence of (5) with:

*“Operations shall be deemed not to materially increase the baseline ambient noise level if the measured sound level attributable to the data center at the Project Boundary does not exceed the established baseline ambient noise level by more than three (3) dB(A) or three (3) dB(C). An increase of more than three (3) dB above the established baseline shall be deemed a violation unless specifically authorized as a condition of approval.”*

Three dB is the conventional threshold of perceptibility for broadband sound and is widely used in noise ordinances. This preserves the County’s protection while making the provision capable of being complied with and enforced.

**2. “Property Boundary” and “Project Boundary” are used interchangeably, and neither is defined.**

**Problem.** Subsection (4) measures sound at the “Property Boundary.” The redline changes (5), (7)(A) and (7)(B) to “Project Boundary” but leaves (4) unchanged. Two different terms now appear within the same subsection, and neither appears to be defined in the draft.

**Suggested language.** Conform (4) to use “Project Boundary,” and add a definition:

*“‘Project Boundary’ means the perimeter of the Development Area identified in the approved Conditional Use Permit, or where the Development Area is a portion of a larger parcel under common ownership or control, the perimeter of that larger parcel.”*

**3. Section 10(c)(3) — post-construction testing does not fit a phased build.**

The study must be performed “no sooner than one month but no more than twelve (12) months after the issuance of the **first** Certificate of Occupancy.” A facility built in modules may receive its first Certificate of Occupancy with only a fraction of the eventual load installed. Testing at that point measures a facility that does not yet exist at scale, and the twelve-month window may close before full buildout. Suggested addition:

*“Where the data center is constructed or energized in phases, the post-construction noise study shall be performed for each phase within twelve (12) months after the Certificate of Occupancy for that phase, and a final study shall be performed within twelve (12) months after the facility first reaches ninety percent (90%) of its approved design load.”*

**4. Section 10(c)(6) — sixty days is not sufficient to install acoustical mitigation.**

The subsection requires the owner to implement mitigation and re-test within sixty (60) days. The remedies it names — acoustical louvers, barriers, silencers, enclosure upgrades — are fabricated to order, and lead times routinely run four to six months. Sixty days is achievable for operational changes only. Suggested revision:

*“...the owner or operator shall submit a mitigation plan within sixty (60) days, implement operational changes capable of implementation within that period, and complete all mitigation and re-test within one hundred eighty (180) days, subject to extension by the Zoning Administrator for documented equipment lead times or other causes beyond the owner’s reasonable control.”*

**5. Section 10(c)(4) — add a measurement protocol and exclude extraneous sources.**

The regulation references ANSI/IEC standards for the post-construction study but does not address measurement conditions. In an agricultural setting, wind in vegetation, farm equipment, livestock, insects and highway traffic frequently dominate the measured level and have nothing to do with the facility. Suggested addition to (4):

*“Measurements shall be taken with Type 1 instrumentation, at a microphone height of five (5) feet above grade, and shall not be taken during precipitation or when wind speed exceeds eleven (11) miles per hour. Sound not attributable to the data center, including traffic, agricultural operations, livestock, wildlife and wind-induced vegetation noise, shall be identified and excluded from the measured level.”*

**6. “Noise-Sensitive Receptor” and “nearby” are undefined, and receptor measurement is now mandatory.**

The redline strikes “if required by the CUP or Zoning Administrator” at line 669, which makes measurement at nearby receptors mandatory rather than discretionary. We do not object to that change, but the trigger now requires content: “nearby” should be given a distance, “Noise-Sensitive Receptor” should be defined, and the set of receptors should be fixed as of the date the application is deemed complete, so that a residence constructed after permit issuance does not retroactively alter the obligation. The same definition would resolve the identical ambiguity in Section 10(d)(2), which now requires a vibration study wherever receptors are “nearby.”

**7. Sections 10(c)(5) and 10(c)(7)(B) state the same rule in two different ways.**

Both address the circumstance in which baseline ambient exceeds the maximum permitted level. Subsection (5) provides that operations must not “materially increase” the baseline; (7)(B) provides that levels “shall not exceed the baseline ambient noise level.” A facility could satisfy one and fail the other. We suggest consolidating them into a single provision, and if Item 1 is adopted, conforming (7)(B) to the same three-decibel formulation.

**8. Section 10(d)(1) — the vibration table contains gaps.**

The table gives values at 10, 20, 30, 40, 50 and 60 cycles per second, with no interpolation rule for intermediate frequencies and no standard above 60 cps. Rotating equipment in a

facility of this kind commonly operates above that range. We suggest adding a linear interpolation rule, stating the standard applicable above 60 cps, and permitting compliance to be demonstrated by peak particle velocity under a recognized standard as an alternative to displacement in inches, which is an uncommon metric in current practice.

**9. Section 10(h)(2) — the thermal provision would benefit from a standard and a process.**

If the Zoning Administrator determines that a facility “is causing or is likely to cause adverse thermal impacts,” the owner must “modify operations... or take any other action reasonably necessary” within a time the Administrator specifies. The draft does not define adverse thermal impact, identify a measurement standard, require written findings, or provide an opportunity to be heard. “Modify operations” could be read to permit curtailment of a facility constructed in reliance on an approved permit. We suggest the provision be tied to a measurable standard and carry notice, written findings supported by data, a reasonable period to cure, proportionality between the condition found and the remedy imposed, and an opportunity for the permittee to be heard before conditions are imposed. The same additions would strengthen the County’s position if the provision were ever challenged.

We would be glad to make a qualified acoustical consultant available to meet with County staff, at no cost to the County, to assist in developing the measurement protocol described in Item 5 or any of the other items above.