

## OPTIMUS-EVERBROOK SENIOR LIVING

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July 5, 2022

Jared S. Chicoine, Commissioner  
New Hampshire Department of Energy  
21 South Fruit Street, Suite 10  
Concord NH 03301-2429

Re: Hillsbrook Village-Waiver Request

Dear Commissioner, Chicoine:

On behalf of developer Optimus Senior Living, owner Allentown Senior Living, a/k/a Hillsbrook Village and manager Everbrook Senior Living, collectively “Hillsbrook”, we are filing this letter seeking a waiver from PUC Rule 303.02, which prohibits master metering in a building with multiple dwelling units, pursuant to New Hampshire Public Utilities Commission, “PUC”, Rules 201.05, and 202.01, based on our understanding that authority to grant waivers was transferred to the DOE, pursuant to RSA 12-P-14. This request for a waiver, and thus approval to master meter electricity, is in the public interest and will not disrupt the orderly and efficient resolution of energy efficiency concerns which come before the DOE, for reasons set out in this letter.

As background, Hillsbrook Village is a 118-unit senior living community within a single building envelope, of four stories offering in addition to assisted and memory care living, an independent living style reserved to older adults of advanced age, typically age 80 plus, who remain able to perform activities of daily living like showering, while having difficulty keeping up with those domestic activities like driving a car, maintaining the home, or paying bills. All Hillsbrook residents will be entitled to receive as part of their residency fees a variety of domestic services including restaurant-style dining served by a commercial kitchen, transportation, other shared activities, and including utilities, as an accommodation for their age-related activity limitations.

It was an expectation of the design team, that the entire building, as it was designed in accordance International Building Code, Chapter 3, category

Institutional use group I-1, condition 1 (assisted living) and I-1, condition 2, (memory care) would be classified as an institutional use and subject to master metering of electricity usage.

However, while New Hampshire adopts the IBC it also adopts the NFPA for fire code compliance which limits board and care occupancies in Type V Construction, to two floors without a waiver. Hillsbrook conceived a building that could achieve an equivalency determination as compared with a non-combustible structure, such as its installation of an NFPA 13 sprinkler system, and other value engineered designs, to be eligible for a waiver of the two-story limit on board and care, but its request for a waiver was denied. As a result, the design team recently reclassified its first-floor memory care unit comprised of 19 units as a healthcare occupancy, its first and second floor apartments comprised of 43 assisted living units as a board and care occupancy, and its third and fourth floor apartments reserved to independent residents of advanced age, comprised of 56 residential style units, as type R-2, a residential occupancy. The reclassification of the upper floor apartments implicates the requirement of individual metering of those R-2 designated units unless the requirement were to be waived which is in the purview of the DOE to consider doing.

Nevertheless, the design team incorporated a whole-building approach to saving on energy usage, and in doing so, was able to exceed the required energy ratings set out in IECC 2015, which New Hampshire adopts as an alternative to individual metering of electricity, which in our view should be avoided at Hillsbrook as it would shift responsibility of energy conservation to the vulnerable elderly, whose electricity usage would be best regulated by a professional manager. As an example, the whole building's heat and air condition will be supplied by a high-efficiency HVAC system which has a water-source heat pumps circulating to give each apartment and common areas more efficient energy on demand, as opposed to an electrically supplied PTAC System, which would have been less expensive, and far less energy efficient. Moreover, the building envelop was designed to surpass minimum energy requirements of the IECC 2015, by 8 %, which code update had already become more stringent than previous iterations. (See Envelope Compliance Certificate, attached hereto). The additional efficiencies were made possible by using a U value for all exterior doors and windows that was more stringent than the minimum requirements of the IECC 2015, and being built with a wood frame, adds additional thermal efficiency over noncombustible steel or concrete. Other components a whole building approach to energy conservation included use of LED lighting, and appliances that are energy star rated.

Hillsbrook's whole building approach to energy efficiency took into

consideration the characteristics of our independent residents, most of whom will have advanced ages, 80 plus, will have difficulty self-regulating utility usage as well as food preparation and consumption, and will prefer to rely on our professional staff to regulate utility usage for them. In fact, many of our residents will have a compromised health status that would be made worse if they were allowed opportunity to keep temperatures at nonoptimal levels to save money.

Because each of the independent living units was designed without an individual meter, Hillsbrook is seeking a waiver from PUC Rule 303.02, a., which makes clear that “no utility shall install master metering in a building with multiple dwelling units. The energy in each dwelling unit in such a building shall be separately metered”. The rule goes on to state in subsection (b) that a utility shall only install master metering in commercial buildings and as consistent with the International Energy Conservation Code, 2009. Because Hillsbrook is a commercial building, within the IECC, 2009, it would be subject to 505.7-Electrical Energy Consumption. (Mandatory), which states, “In buildings having individual dwelling units, provisions shall be made to determine the electrical energy consumed by each tenant by separately metering individual dwelling units”. It is reasonable to conclude that the energy code intended for larger multi-family apartments, with a mix of uses like Hillsbrook, to master meter to a single transformer, with an option to place check meters for each of the independent living units. Whichever is the proper interpretation of PUC 303.02, rather than litigate the issue of whether Hillsbrook is to provide a master meter or individually controlled meters, we seek a waiver of the requirement to separately meter individual dwelling units pursuant to PUC Rule 201.05 (a), which grants the DOE the authority to waive provisions in PUC 303.02 if it finds:

- The waiver serves the public interest; and
- The waiver will not disrupt the orderly and efficient resolution of matters before the commission.

Under PUC Rule 201.05 (b), in determining the public interest, the PUC (now DOE), shall waive a rule if: compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; *or*, (2) the purpose of the rule would be satisfied by an alternative method.

A waiver from PUC 303.02, will serve the public interest in the Hillsbrook project, by removing an onerous requirement of having individual utility meters in our independent dwelling units where, as previously emphasized, residents will have difficulty self-regulating energy consumption, or pay monthly utility charges, and may even suffer deleterious effects to their health if given the option to reduce

energy consumption to save money. Even a check meter could over-incentivize them to want to turn temperatures to suboptimal levels to save money which could significantly compromise their health status.

Moreover, the requirement to separately meter our residential dwelling units would be onerous to Hillsbrook as the cost to install separate meters is significant, yet, as already summarized, there would be no benefit to the users as little or no energy conservation would likely be yielded from this method. The waiver will also serve the public interest by avoiding unnecessary litigations on the issue of which metering method would be required in the PUC rule. Finally, where Hillsbrook's design team was able to achieve a higher energy efficiency through value-added engineering, which enabled it to exceed the minimal requirements of the current energy codes, which are more stringent than previous iterations, through installation of a high efficiency HVAC mechanical system, a more energy efficient building envelope, star rated appliances, and LED lighting, it is in the public interest to waive a rule when the purpose of the rule could be and was satisfied by alternative methods to those required in a rule like individual metering here.

Granting this waiver will also not disrupt the orderly and efficient resolution of matters before the DOE. For reasons cited above, we anticipate that the DOE, will be able to quickly review this matter and conclude that a waiver is appropriate under these circumstances.

Hillsbrook Village is committed to bringing a first-rate senior living community offering three distinct levels of living, independent, assisted and memory care living to New Hampshire, so area seniors have opportunity to age-in-place and remain as independent as possible for as long as possible. Waiving the requirement of individually metering those dwelling units categorized as R-2, will enable all residents to defer to us to regulate their utility usage, which gives to them more freedom to enjoy the more esoteric aspects of senior living. We, therefore, request that the DOE grant this waiver request as soon as possible. If you need any other materials to complete this review, please let us know at your earliest convenience. Thank you.

Very truly yours,

~Robert E Kelley~  
In-house Legal Counsel

