

EMERGENCY RULE ADDRESSES ENERGY STORAGE SYSTEMS FIRE AND SAFETY CONCERNS

Hodgson Russ Renewable Energy Alert
October 18, 2019

On October 16, 2019, New York's Department of State ("DOS") and State Fire Prevention and Building Code Council ("Code Council") issued an emergency rule making and notice of rule adoption that adds new provisions regarding energy storage systems ("ESS") to the New York State Uniform Fire Prevention and Building Code (the "Uniform Code"). The Uniform Code, which is applicable in all parts of the State except New York City, now incorporates by reference a publication entitled the "2019 Energy Storage System Supplement (Revised September 2019)," which covers the installation, use, and maintenance of energy storage systems.

According to the notice, "These new provisions will require extra protective measures in all cases where ESS are used; require extra protective measures based on the location of the installation; and otherwise enhance the level of protection to all people of the State from the potential hazards of fires caused by the installation and use of ESS."

For developers, the emergency rule may result in an "initial cost increase" when an ESS either has capacity greater than 50 kWh or is designed to be placed less than three feet of each other and needs to undergo a large-scale fire test meeting the standard of UL 9540A. The UL 9540A tests are often paid by the manufacturer, and according to the notice, can range from \$30,000 to \$50,000 for cell and module level tests, to \$50,000 to \$80,000 for unit level tests (required when the ESS units exceed 50 kWh). The emergency rule also has a requirement to install a gas detection system and automatic ventilation system, which depending on the particular ESS, could range from \$1,000 to \$5,000 per gas detector, and from \$25,000 to \$50,000 for "a fully integrated detection and ventilation system."

On July 17, 2019, DOS and the Code Council had issued a notice of emergency adoption and notice of proposed rulemaking for a substantially similar rule. When that emergency rule expired on September 28, it necessitated the creation of another, comparable rule that would "... provide an adequate level of protection from the hazards of fire that could be caused by the installation and use of [ESS]." The recently promulgated emergency rule fills this regulatory gap and is effective until November 1, 2019, at which point the non-emergency rule, which is similar in substance and has been subject to public comment, becomes effective. The non-

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emergency rule has no express expiration date.

If you have any questions about these changes to the Uniform Code or how they may affect development of energy storage systems in New York, please contact a member of Hodgson Russ's Renewable Energy Practice at <https://www.hodgsonruss.com/practices-renewable-energy.html>.

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