

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): April 20, 2020

FUELCELL ENERGY, INC.
(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

1-14204
(Commission
File Number)

06-0853042
(IRS Employer
Identification No.)

**3 Great Pasture Road,
Danbury, Connecticut**
(Address of Principal Executive Offices)

06810
(Zip Code)

Registrant's telephone number, including area code: (203) 825-6000

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 par value per share	FCEL	The Nasdaq Stock Market LLC (Nasdaq Global Market)

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01. Entry into a Material Definitive Agreement.

On April 20, 2020, FuelCell Energy, Inc. (the “Company”) entered into a Paycheck Protection Program Promissory Note, dated April 16, 2020 (“Note”), evidencing a loan to the Company from Liberty Bank under the recently enacted Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) administered by the U.S. Small Business Administration (“SBA”).

Pursuant to the Note, the Company received total proceeds of approximately \$6.5 million on April 24, 2020. In accordance with the requirements of the CARES Act, the Company will use the proceeds primarily for payroll costs.

The Note is scheduled to mature on April 16, 2022, has a 1.00% per annum interest rate, and is subject to the terms and conditions applicable to loans administered by the SBA under the CARES Act. Monthly principal and interest payments, less the amount of any potential forgiveness (as discussed below), will commence on November 16, 2020. The Company did not provide any collateral or guarantees for the Note, nor did the Company pay any facility charge to obtain the Note. The Note provides for customary events of default, including, among others, those relating to failure to make a payment when due under the Note, failure to comply with any provision of the Note, bankruptcy, and breaches of or materially misleading representations. Upon the occurrence of an event of default, Liberty Bank may require immediate payment of all amounts owing under the Note, collect all amounts owing from the Company, and pursue other remedies. The Note may be prepaid at any time with no prepayment penalties.

Proceeds may only be used for the Company’s eligible payroll costs (with salary capped at \$100,000 on an annualized basis for each employee), rent and utilities, in each case paid during the eight-week period following disbursement. However, at least 75% of the proceeds must be used for eligible payroll costs. The loan may be fully forgiven if (i) proceeds are used to pay eligible payroll costs, rent and utilities and (ii) full-time employee headcount and salaries are either maintained during the applicable eight-week period or restored by June 30, 2020. If not so maintained or restored, forgiveness of the loan will be reduced in accordance with the regulations to be issued by the SBA. Any forgiveness of the loan will be subject to approval by the SBA and Liberty Bank and will require the Company to apply for such treatment in the future. The Company will carefully monitor all qualifying expenses and other requirements necessary to maximize loan forgiveness.

The Company has an existing relationship with Liberty Bank that is unrelated to this loan, through the Company’s affiliate Bridgeport Fuel Cell, LLC, which, on May 9, 2019, entered into a Credit Agreement with Liberty Bank, as Administrative Agent and Co-Lead Arranger, to fund the acquisition of the Bridgeport Fuel Cell Park.

The foregoing description of the loan and the Note is a summary and is qualified in its entirety by reference to the full text of the Note, which is attached as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information contained in Item 1.01 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 2.03.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.*Salary Deferrals*

On April 23, 2020, as part of the efforts by the Company to mitigate the financial and operational impacts of COVID-19, the Company determined to take certain compensation actions affecting certain executives, including the currently employed named executive officers identified in the Company’s most recent proxy statement filed with the Securities and Exchange Commission (collectively, the “Officers”). Effective May 1, 2020, a portion of each Officer’s base salary will be deferred for three months (i.e., the months of May, June and July), at the end of which time the Company will pay such deferred amounts to such Officers over a three month period (i.e., over the months of August, September and October). The base salary deferrals will be 20% of base salary for Jason Few, the President, Chief Executive Officer (the “CEO”) and Chief Commercial Officer, and 10% of base salary for each of Michael Bishop, the Chief Financial Officer and Treasurer, Michael Lisowski, the Chief Operating Officer, Anthony Leo, the Chief Technology Officer, and Jennifer Arasimowicz, the General Counsel, Corporate Secretary and Chief Administrative Officer. Additionally, the CEO’s monthly commuting expenses of \$13,000 will be suspended until such time as the CEO resumes commuting between Houston and Connecticut.

Amendment to CEO Employment Agreement

On April 23, 2020, due to the travel impacts of COVID-19, the Company entered into an amendment (the “Amendment”) to the Employment Agreement, effective as of August 26, 2019, between the Company and the CEO (the “Employment Agreement”). The Amendment provides that the Company shall pay to the CEO a lump sum cash payment in the gross amount of \$200,000, within 30

days following his relocation to the Danbury, Connecticut area, provided that (i) such relocation occurs by no later than eighteen months after the effective date of the Employment Agreement and (ii) the CEO is employed by the Company on the date of any such payment. This provision of the Amendment extends the time for making such relocation payment by 6 months, as under the original Employment Agreement, the relocation payment would be made only if the relocation occurred no later than the first anniversary of the effective date of the Employment Agreement. The Amendment further provides that the CEO's commuting and apartment expenses, which were to be paid by the Company through the first anniversary of the effective date of the Employment Agreement, will continue to be paid through the date that is eighteen months after the effective date of the Employment Agreement in the amounts set forth in the Employment Agreement. All other terms and conditions of the Employment Agreement remain in full force and effect.

The foregoing description of the Amendment is a summary and is qualified in its entirety by reference to the full text of the Amendment, which is attached as Exhibit 10.2 to this Current Report on Form 8-K and is incorporated by reference into this Item 5.02.

Item 7.01. Regulation FD Disclosure.

On April 23, 2020, the Company also advised certain affected employees that, effective May 1, 2020, there will be a temporary salary deferral for all Senior Vice Presidents and Vice Presidents of the Company in the United States and Canada of 10% for a period of three months (i.e., May, June and July) at the end of which time the Company will pay such deferred amounts (i.e., over the months of August, September and October).

The information furnished in this Item 7.01 is not deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liability of that section. This information will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent that the Company specifically incorporates it by reference.

Item 9.01. Financial Statements and Exhibits.

(d) The following exhibits are being furnished herewith:

<u>Exhibit No.</u>	<u>Description</u>
10.1	<u>Paycheck Protection Program Promissory Note entered into on April 20, 2020 and dated April 16, 2020, between Liberty Bank and FuelCell Energy, Inc.</u>
10.2	<u>First Amendment, dated as of April 23, 2020, to the Employment Agreement, effective as of August 26, 2019, between FuelCell Energy, Inc. and Jason B. Few.</u>

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

FUELCELL ENERGY, INC.

Date: April 24, 2020

By: /s/ Michael S. Bishop
Michael S. Bishop
Executive Vice President and Chief Financial Officer

PAYCHECK PROTECTION PROGRAM PROMISSORY NOTE

SBA Loan #	1726387105
SBA Loan Name	FuelCell Energy, Inc.
Date	04/16/2020
Loan Amount	\$6,515,045.00
Interest Rate	One percent (1%) per annum
First Payment Due Date	11/16/2020
Payment Address	315 Main Street Middletown, CT 06457 or such other address as Lender may designate in writing.
Borrower	FuelCell Energy, Inc.
Lender	Liberty Bank

1. DEFINITIONS:

“Application” means the application submitted to Lender in connection with this Loan and any other documentation, records or information submitted to Lender in connection therewith, no matter whether submitted through an online application, through email or otherwise.

“Business Day” means any day other than a Saturday, Sunday, or bank holiday. “CARES Act” means the Coronavirus Aid, Relief, and Economic Security Act. “Deferral Period” means the 6-month period beginning on the date of this Note. “Loan” means the loan evidenced by this Note.

“Maturity Date” means the second anniversary of the date of this Note.

“Paycheck Protection Program” or “PPP” means the loan program administered by the SBA under the SBA’s Section 7(a) loan program as amended by the CARES Act.

“PPP Laws” means the CARES Act and the PPP, together with other federal statutes, regulations, administrative guidance, and SBA requirements that are now, or may later become, applicable to the Loan, the Lender or the Borrower.

“Repayment Period” means the 18-month period commencing on the 6-month anniversary of the date

of this Note.

“SBA” means the United States Small Business Administration.

2. PROMISE TO PAY:

Borrower promises to pay to the order of Lender the Loan Amount set forth above and all other amounts required by this Note, plus interest on the unpaid daily principal balance of such Loan Amount at the Interest Rate set forth above [computed on an actual day basis], according to the Payment Terms set forth below. Interest will continue to accrue on any unpaid principal of this Loan at the Interest Rate set forth above until the principal shall have been paid in full, whether before or after maturity, by Acceleration or otherwise and whether or not judgment shall have been obtained.

3. PAYMENT TERMS:

Borrower must make all payments in U.S. Dollars to Lender at the Payment Address. The payment terms for this Note are:

- A. No payments are required during the Deferral Period.
- B. Except as provided below, Monthly Payments are due on the same day of each succeeding month, beginning on the First Payment Date set forth above.
- C. Unless all principal and interest on the Loan is forgiven on or before the end of the Deferral Period (in accordance with Section 5 below), Borrower will make monthly payments calculated as follows (“Monthly Payments”):

The Monthly Payment will be in an amount sufficient to repay the principal balance outstanding at the end of the Deferral Period, with interest at the Interest Rate set forth above, in equal monthly payments over the remaining term of the Loan. The Monthly Payment amount will not include any unpaid interest that has accrued during the Deferral Period (“Deferred Interest”). Borrower will be required to pay the Deferred Interest on the Maturity Date. The Monthly Payment amount will be computed based on the assumption that Borrower will make all payments on their respective due dates. Because interest is computed daily, late payments increase the amount of interest that accrues on the Loan and early payments decrease that amount. The amount of the final payment will be adjusted as necessary to reflect the actual dates on which Lender receives the Borrower's payments.

- D. Borrower will pay any non-interest charges or fees incurred under the terms of the Loan or the PPP Laws immediately on demand by Lender.
- E. If not sooner paid, Borrower will pay Lender any and all unpaid principal, interest, and other charges on the Maturity Date.
- F. Borrower agrees to pay any and all expenses incurred by Lender pursuant to Section 10 below in collecting and enforcing this Note.
- G. Borrower may prepay this Note in whole or in part at any time without penalty.
- H. Except to the extent otherwise provided by the PPP Laws, payments (including any amounts forgiven pursuant to the PPP) will be applied to interest, charges, and principal as determined by the Lender in the reasonable exercise of its discretion.

4. CERTIFICATIONS:

It is the express intention of Borrower and Lender that the Loan and this Note at all times conform to the terms, conditions, and requirements of the PPP Laws. As such, Borrower hereby confirms the certifications made by Borrower in the Application and further certifies to Lender as follows:

- A. Borrower is familiar with the rules and regulations applicable to the PPP, including without limitation, any rules related to “affiliations”, and is eligible to participate in the PPP. The proceeds of the Loan will be used only for purposes permitted by the PPP.
- B. Any tax documents provided to Lender are identical to those submitted to the Internal Revenue Service.
- C. Borrower has not and is not using an “agent” that would be entitled to fees in accordance with the PPP Laws.

5. FORGIVENESS:

According to the Interim Regulation issued by the SBA in connection with the PPP (“Interim Regulation”), the Loan may be forgiven in whole or in part under certain circumstances. The amount of the Loan forgiveness can be up to the full principal amount of the Loan and any accrued interest. The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the Loan. However, not more than 25 percent of the Loan forgiveness amount may be attributable to non-payroll costs. The Borrower hereby acknowledges that, as of the date of this Note, the SBA has not issued definitive guidance on the forgiveness process, but expects to do so in the future (“Forgiveness Rules”).

If and to the extent that Borrower has paid expenses eligible to be forgiven under the applicable provisions of the Forgiveness Rules and other PPP Laws, Borrower may elect to submit to Lender an application for forgiveness of the Loan, together with all documentation reasonably necessary to support such application (the "Forgiveness Application"). In the event Borrower submits a Forgiveness Application, Borrower agrees to comply with the Forgiveness Rules and to cooperate with Lender in the preparation, completion and submission of such Forgiveness Application, and to resolve any questions that arise following the submission of the Forgiveness Application.

Borrower agrees that to the extent permitted by the Forgiveness Rules and other PPP Laws, Lender may establish, using its reasonable discretion, requirements for the submission of information by the Borrower for the completion of a Forgiveness Application, including timing requirements, and Borrower agrees to abide by those requirements. In so doing, Borrower acknowledges that these requirements may be necessary to enable Lender to process a high volume of requests for forgiveness by borrowers pursuant to the PPP.

6. REPRESENTATIONS AND WARRANTIES:

Borrower represents and warrants to the Lender as follows:

- A. If Borrower is an entity, Borrower is currently existing, in good standing, and duly organized under the laws of the state of its organization and has the power to own its property and to carry on its business in each jurisdiction in which it operates.
- B. Borrower has full power and authority to enter into this Note, to execute and deliver this Note, and to incur the obligations provided for in this Note, including the Loan. No consent or approval of members or of any public authority is required as a condition to the validity of this Note. Borrower's execution of this Note has been duly authorized by all necessary actions of its governing body. The person signing this Note has been duly authorized to do so on behalf of Borrower.
- C. The Note constitutes the valid and legally binding obligation of the Borrower, enforceable in accordance with its stated terms.

7. COVENANTS:

Borrower hereby covenants and agrees, until the Loan is repaid in full:

- A. To keep complete and accurate books and records related to the financial affairs and business condition of Borrower in a manner satisfactory to Lender, furnish financial statements as requested by Lender, and allow Lender and SBA to inspect and audit books, records, and papers relating to Borrower's financial or business condition;
- B. Without limiting the foregoing, to maintain complete and accurate records regarding the use of the Loan proceeds, recognizing that the failure to maintain, or to be able to produce, such records may harm Borrower's ability to obtain forgiveness for all or part of the Loan; and

- C. Not to change, without Lender's consent, its ownership structure, make any distribution of company assets that would adversely affect its financial condition, or transfer (including pledging) or dispose of any assets, except in the ordinary course of business.

8. DEFAULT:

Borrower is in default under this Note if Borrower does not make a payment when due under this Note, or if Borrower:

- A. Otherwise fails to comply with any provision of this Note;
- B. Does not disclose, or anyone acting on behalf of Borrower does not disclose, any material fact to Lender or SBA;
- C. Makes, or anyone acting on behalf of Borrower makes, a materially false or misleading representation or certification to Lender or SBA in connection with the Loan including, without limitation, in Borrower's application for this Loan or in connection with any Forgiveness Application pursued by Borrower.
- D. Becomes the subject of a proceeding under any bankruptcy or insolvency law;
- E. Has a receiver or liquidator appointed for any part of Borrower's business or property;
- F. Makes an assignment for the benefit of creditors;
- G. Reorganizes, merges, consolidates, or otherwise changes ownership or business structure without Lender's prior written consent; or
- H. Becomes the subject of a civil or criminal action that Lender believes may materially affect Borrower's ability to pay this Note.

9. LENDER'S RIGHTS IF THERE IS A DEFAULT:

Without notice or demand and without giving up any of its rights, Lender may:

- A. Require immediate payment of all amounts owing under this Note ("Acceleration");
- B. Collect all amounts owing from the Borrower;
- C. File suit and obtain judgment; and
- D. Pursue other remedies available at law or in equity to collect amounts owing from the Borrower in connection with the Loan.

10. LENDER'S GENERAL POWERS:

Without notice and without Borrower's consent, Lender may incur expenses to collect amounts due under this Note and/or enforce the terms of this Note. Among other things, the expenses may include payments for reasonable attorney's fees and court costs. If Lender incurs such expenses, it may demand immediate repayment from Borrower or add the expenses to the principal balance.

11. GOVERNING LAW, VENUE, AND JURY TRIAL AND PREJUDGMENT REMEDY WAIVERS:

When SBA is the holder, this Note will be interpreted and enforced under federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Note, Borrower may not claim or assert against SBA any local or state law to deny any obligation, defeat any claim of SBA, or preempt federal law.

If SBA is not the holder, this Note will be interpreted and enforced under Connecticut law (not including its choice of laws provisions), except that requirements of the CARES Act and PPP will be interpreted and enforced under federal law, including SBA regulations and administrative guidance, as in effect from time to time.

Any legal action or proceeding regarding the parties' rights and obligations under this Note may be brought only in the state and federal courts with proper jurisdiction located in the State of Connecticut and the parties expressly submit themselves to the personal jurisdiction of such courts.

BORROWER ACKNOWLEDGES THAT THIS TRANSACTION IS A COMMERCIAL TRANSACTION AND HEREBY WAIVES THE RIGHT TO PRIOR NOTICE OR A PRIOR HEARING ON THE RIGHT OF BANK TO A PREJUDGMENT REMEDY. A PREJUDGMENT REMEDY ENABLES THE LENDER, BY WAY OF ATTACHMENT, GARNISHMENT, OR REPLEVIN TO DEPRIVE BORROWER OF, OR AFFECT THE USE, POSSESSION, OR ENJOYMENT BY BORROWER OF, ANY OF ITS PROPERTY AT ANY TIME PRIOR TO JUDGMENT IN ANY LITIGATION INSTITUTED IN CONNECTION WITH THIS NOTE.

BORROWER AND LENDER HEREBY WAIVE TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING OR ANY MATTER ARISING IN CONNECTION WITH, OR RELATED TO, THE FINANCIAL TRANSACTION OF WHICH THIS NOTE IS A PART, OR THE ENFORCEMENT OF THE LENDER'S RIGHTS AND REMEDIES WITH REGARD TO THE LOAN. BORROWER EXPRESSLY ACKNOWLEDGES THAT THE BORROWER IS MAKING THIS WAIVER, AND THE WAIVER IN THE PRECEEDING PARAGRAPH, KNOWINGLY AND WILLINGLY.

12. SUCCESSORS AND ASSIGNS:

Under this Note, "Borrower" includes its successors and "Lender" includes its successors and assigns.

13. GENERAL PROVISIONS:

- A. Borrower must sign all documents necessary at any time to comply with the Loan and the PPP Laws.
- B. Lender may exercise any of its rights separately or together, as many times and in any order it chooses. Lender may delay or forgo enforcing any of its rights without giving up any of them.
- C. Borrower may not use an oral statement of Lender or SBA to contradict or alter the written terms of this Note.
- D. If any part of this Note is unenforceable, that part of the Note will be deemed to be amended to afford the Lender the maximum rights allowed by law. The rest of the Note will not be affected.

- E. To the extent allowed by law, Borrower waives all demands and notices in connection with this Note, including presentment, demand, protest, and notice of dishonor.
- F. This Note will not be governed by any existing or future credit or loan agreement between Borrower and Lender, unless otherwise expressly provided therein. The liabilities guaranteed under any existing or future guarantee in favor of Lender will not include this Note. Any collateral given to secure any existing or future indebtedness to Lender will not secure this Note.
- G. This Note reflects the entire understanding of the parties with respect to the Loan and supersedes any prior agreements and representations by SBA or the parties hereto.
- H. Borrower's liability under this Note will continue with respect to any amounts SBA may pay Lender based on an SBA guarantee of this Note and SBA or Lender may seek recovery from Borrower of any such amounts paid by SBA. Any agreement under which the SBA guarantees all or any portion of this Note to Lender does not create any third party rights or benefits for Borrower.
- I. Borrower acknowledges that the SBA and other governmental agencies may issue further guidance or regulations and may amend, modify, or eliminate existing guidance or regulations that are a part of the PPP Laws in a manner that has a material effect on the Loan and this Note. Borrower agrees to cooperate fully in the correction, if necessary in the reasonable discretion of Lender, of any and all loan documents so that all documents accurately describe and give full effect to the Loan as contemplated by the PPP laws as amended from time to time. Borrower further agrees to execute any additional documents that Lender may from time to time deem to be required by the SBA or the PPP Laws, including, without limitation, any note or similar instrument required to substitute and replace this Note. To the extent that any provision of this Note is in contravention of the PPP Laws, this Note will be modified without further action by Lender or Borrower so that it complies with the PPP Laws.
- J. Borrower acknowledges that, in making and administering the Loan, Lender has made certain judgments based on information provided by or on behalf of Borrower and will make further judgments in submitting any Forgiveness Application to SBA, and Borrower agrees to hold Lender harmless and to indemnify Lender from any losses arising from or related to Lender's reliance on such information provided by or on behalf of Borrower, its judgments related to the origination of the Loan and submitting Borrower's Forgiveness Application to SBA, and any determination made by any governmental entity related to forgiveness or Borrower's compliance with this Note or other aspects of the PPP.

14. ELECTRONIC CONTRACT AND SIGNATURES:

- A. This Note is being created and will be stored electronically. Borrower agrees that this Note is a "transferable record" for purposes of the laws governing electronic transactions. Lender has the right to control the transferable record. Any paper copy or other "print out" created from the electronic record will be considered an "original" document and will be admissible in any proceeding to the same extent and under the same conditions as other original business records created and maintained in documentary form.

B. Borrower's electronic signature on this Note will have the same force and effect as if Borrower had signed it on paper.

15. BORROWER'S ACKNOWLEDGEMENTS AND SIGNATURE:

By signing below, Borrower acknowledges and agrees that:

- A. Lender makes no representation or warranty as to: (i) the Borrower's ability to receive forgiveness for any portion of the Loan; (ii) the eligibility of any of Borrower's expenses for forgiveness under the Forgiveness Rules; (iii) the contents of the Forgiveness Application or the documentation required for any forgiveness; or (iv) the tax consequences, federal, state or otherwise, if any, associated with the forgiveness of any portion of the Loan.
- B. Lender can share the tax information with SBA and SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with the SBA's loan program requirements and all SBA reviews.
- C. Guidance setting forth the conditions precedent to forgiveness has not been finalized, and that as a result forgiveness may be materially more difficult to obtain than currently contemplated.
- D. If and to the extent that SBA does not forgive the Loan, then Borrower will owe to Lender the outstanding amount of principal and interest on the Loan.
- E. If Borrower defaults on the loan, SBA may be required to pay Lender under the SBA guarantee, and SBA may then seek recovery on the Loan.
- F. All communications made by Lender relating to the PPP are qualified in their entirety by the text of the PPP Laws, as may be amended and/or supplemented by currently existing or forthcoming regulations, guidance and requirements of the SBA and other governmental agencies.
- G. Lender has relied, and will rely, in good faith on the certifications, representations, warranties, covenants and acknowledgments made by the Borrower in this Note, in the Application, in any Forgiveness Application and in any other loan documents related to the Loan.
- H. Borrower is bound by and will comply with all provisions of this Note.

FuelCell Energy, Inc.
Borrower's Name

By:	/s/	Michael	S.
<u>Bishop</u>			Print
Name:		Michael	S.
<u>Bishop</u>			
Title:	EVP,	CFO	and
<u>Treasurer</u>			Date
Signed:		April	20,
<u>2020</u>			

FUELCELL ENERGY, INC.
FIRST AMENDMENT TO
EMPLOYMENT AGREEMENT

THIS FIRST AMENDMENT TO EMPLOYMENT AGREEMENT (the "Amendment") is made and entered into as of April 23, 2020, by and between FuelCell Energy, Inc. (the "Corporation") and Jason B. Few (the "Executive").

RECITALS:

WHEREAS, the Corporation and Executive have entered into an Employment Agreement, dated as of August 26, 2019 (the "Employment Agreement"); and

WHEREAS, Paragraph 18 of the Employment Agreement provides that the Employment Agreement may not be amended or modified except by a written agreement executed by the parties thereto; and

WHEREAS, the Corporation and Executive now desire to amend the Employment Agreement as provided herein;

NOW, THEREFORE, on the basis of the foregoing premises, and subject to the proper approval of the Company's Board of Directors, the parties hereto hereby agree as follows:

1. **Defined Terms.** All capitalized terms used herein that are not otherwise defined herein shall have the meanings ascribed to such terms in the Employment Agreement unless the context clearly indicates to the contrary.

2. **Amendment.**

(a) Paragraph 4(i) is hereby amended by deleting the first sentence of such paragraph and substituting therefor the following:

Relocation. In recognition of Executive's agreement to relocate to the Danbury, Connecticut area by no later than the date that is eighteen (18) months after the Effective Date, the Corporation shall pay to Executive a lump sum cash payment in the gross amount of \$200,000 (the "**Relocation Payment**"), which shall be payable to Executive within thirty (30) days following Executive's relocation (but no later than March 15, 2021), provided that (i) such relocation occurs by no later than the date that is eighteen (18) months after the Effective Date, and (ii) Executive is employed by the Corporation on the date of any such payment.

(b) Paragraph 4(j) is hereby amended by deleting such paragraph in its entirety and substituting therefor the following:

Commuting and Apartment Expenses. In recognition of Executive's agreement to commute to the Danbury, Connecticut area until he is able to relocate to such area (as described above), the Corporation shall pay to Executive the gross amount of \$13,000 per month, which shall be payable to the Executive on a regularly scheduled payment date that occurs in each month during which Executive is employed by the Corporation through the date which is eighteen (18) months after the Effective Date (or such earlier time upon Executive's relocation (as described in Section 4.i above). In addition, through the date that is eighteen (18) months after the Effective Date, the Corporation shall provide Executive with a reasonable apartment in the Danbury, Connecticut area.

3. Effective Date of Amendment and Incorporation. The operative provisions of this Amendment shall be effective as of April 23, 2020 and shall be deemed to be part of the Employment Agreement as if originally provided therein. Except as provided herein, all other terms of the Employment Agreement shall continue without modification and shall remain in full force and effect.

IN WITNESS WHEREOF, Executive has hereunto set Executive's hand and the Corporation has caused this Amendment to be executed in its name and on its behalf, all as of the day and year first above written. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

/s/ Jason B. Few
Jason B. Few, Executive

FUELCELL ENERGY, INC.

By: /s/ J.H. England
Name: J.H. England, Chairman