
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
FOR THE QUARTERLY PERIOD ENDED MARCH 31, 2020

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
FOR THE TRANSITION PERIOD FROM **TO**

Commission File Number: 1-34392

PLUG POWER INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

22-3672377
(I.R.S. Employer
Identification Number)

968 ALBANY SHAKER ROAD, LATHAM, NEW YORK 12110
(Address of Principal Executive Offices, including Zip Code)

(518) 782-7700
(Registrant's telephone number, including area code)

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, par value \$0.01 per share	PLUG	The Nasdaq Capital Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐ Smaller reporting company ☐ 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. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The number of shares of common stock, par value of \$0.01 per share, outstanding as of May 08, 2020 was 324,283,734.

INDEX to FORM 10-Q

	<u>Page</u>
<u>PART I. FINANCIAL INFORMATION</u>	
Item 1 – Interim Condensed Consolidated Financial Statements (Unaudited)	3
Condensed Consolidated Balance Sheets	3
Condensed Consolidated Statements of Operations	4
Condensed Consolidated Statements of Comprehensive Loss	5
Condensed Consolidated Statements of Stockholders' (Deficit) Equity	6
Condensed Consolidated Statements of Cash Flows	7
Notes to Interim Condensed Consolidated Financial Statements	8
Item 2 – Management's Discussion and Analysis of Financial Condition and Results of Operations	35
Item 3 – Quantitative and Qualitative Disclosures About Market Risk	55
Item 4 – Controls and Procedures	56
<u>PART II. OTHER INFORMATION</u>	
Item 1 – Legal Proceedings	56
Item 1A – Risk Factors	56
Item 2 – Unregistered Sales of Equity Securities and Use of Proceeds	73
Item 3 – Defaults Upon Senior Securities	73
Item 4 – Mine Safety Disclosures	73
Item 5 – Other Information	73
Item 6 – Exhibits	74
Signatures	75

PART 1. FINANCIAL INFORMATION
Item 1 — Interim Financial Statements (Unaudited)

Plug Power Inc. and Subsidiaries
Condensed Consolidated Balance Sheets
(In thousands, except share and per share amounts)
(Unaudited)

	March 31, 2020	December 31, 2019
Assets		
Current assets:		
Cash and cash equivalents	\$ 74,340	\$ 139,496
Restricted cash	56,804	54,813
Accounts receivable	24,437	25,448
Inventory	92,972	72,391
Prepaid expenses and other current assets	28,500	21,192
Total current assets	277,053	313,340
Restricted cash	176,070	175,191
Property, plant, and equipment, net of accumulated depreciation of \$18,292 and \$17,417, respectively	16,591	14,959
Leased property, net	252,802	244,740
Goodwill	8,673	8,842
Intangible assets, net	5,296	5,539
Other assets	12,059	8,573
Total assets	\$ 748,544	\$ 771,184
Liabilities, Redeemable Preferred Stock, and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 35,503	\$ 40,376
Accrued expenses	14,273	14,213
Deferred revenue	11,557	11,691
Finance obligations	52,047	49,507
Current portion of long-term debt	27,819	26,461
Other current liabilities	10,423	8,543
Total current liabilities	151,622	150,791
Deferred revenue	22,912	23,369
Finance obligations	272,171	265,228
Convertible senior notes, net	112,878	110,246
Long-term debt	79,119	85,708
Other liabilities	13	13
Total liabilities	638,715	635,355
Redeemable preferred stock:		
Series C redeemable convertible preferred stock, \$0.01 par value per share (aggregate involuntary liquidation preference \$16,664); 10,431 shares authorized; Issued and outstanding: 2,620 at March 31, 2020 and 2019	709	709
Series E redeemable convertible preferred stock, \$0.01 par value per share; Shares authorized: 35,000 at both March 31, 2020 and December 31, 2019; Issued and outstanding: zero at March 31, 2020 and 500 at December 31, 2019	—	441
Stockholders' equity:		
Common stock, \$0.01 par value per share; 750,000,000 shares authorized; Issued (including shares in treasury): 322,220,469 at March 31, 2020 and 318,637,560 at December 31, 2019	3,222	3,186
Additional paid-in capital	1,519,257	1,507,116
Accumulated other comprehensive income	1,164	1,400
Accumulated deficit	(1,383,299)	(1,345,807)
Less common stock in treasury: 15,261,007 at March 31, 2020 and 15,259,045 at December 31, 2019	(31,224)	(31,216)
Total stockholders' equity	109,120	134,679
Total liabilities, redeemable preferred stock, and stockholders' equity	\$ 748,544	\$ 771,184

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements.

Plug Power Inc. and Subsidiaries
Condensed Consolidated Statements of Operations
(In thousands, except share and per share amounts)
(Unaudited)

	Three Months Ended March 31,	
	2020	2019
Net revenue:		
Sales of fuel cell systems and related infrastructure	\$ 20,387	\$ 2,544
Services performed on fuel cell systems and related infrastructure	6,521	6,343
Power Purchase Agreements	6,496	6,110
Fuel delivered to customers	7,333	6,582
Other	76	—
Net revenue	40,813	21,579
Cost of revenue:		
Sales of fuel cell systems and related infrastructure	13,744	2,321
Services performed on fuel cell systems and related infrastructure	8,181	6,123
Power Purchase Agreements	14,243	8,998
Fuel delivered to customers	9,035	7,921
Other	81	—
Total cost of revenue	45,284	25,363
Gross loss	(4,471)	(3,784)
Operating expenses:		
Research and development	10,412	7,373
Selling, general and administrative	11,013	9,324
Total operating expenses	21,425	16,697
Operating loss	(25,896)	(20,481)
Interest and other expense, net	(11,583)	(8,345)
Change in fair value of common stock warrant liability	—	(2,126)
Loss before income taxes	\$ (37,479)	\$ (30,952)
Income tax benefit	—	—
Net loss attributable to the Company	\$ (37,479)	\$ (30,952)
Preferred stock dividends declared and accretion of discount	(13)	(52)
Net loss attributable to common stockholders	\$ (37,492)	\$ (31,004)
Net loss per share:		
Basic and diluted	\$ (0.12)	\$ (0.14)
Weighted average number of common stock outstanding	305,192,201	220,605,068

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements.

Plug Power Inc. and Subsidiaries
Condensed Consolidated Statements of Comprehensive Loss
(In thousands)
(Unaudited)

	Three months ended March 31,	
	2020	2019
Net loss attributable to the Company	\$ (37,479)	\$ (30,952)
Other comprehensive loss - foreign currency translation adjustment	(236)	(210)
Comprehensive loss	<u>\$ (37,715)</u>	<u>\$ (31,162)</u>

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements.

Plug Power Inc. and Subsidiaries
Condensed Consolidated Statements of Stockholders' (Deficit) Equity
(In thousands, except share amounts)
(Unaudited)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Treasury Stock		Accumulated Deficit	Total Stockholders' (Deficit) Equity
	Shares	Amount			Shares	Amount		
December 31, 2019	318,637,560	\$ 3,186	\$ 1,507,116	\$ 1,400	15,259,045	\$ (31,216)	\$ (1,345,807)	\$ 134,679
Net loss attributable to the Company	—	—	—	—	—	—	(37,479)	(37,479)
Other comprehensive loss	—	—	—	(236)	—	—	—	(236)
Stock-based compensation	156,416	2	3,051	—	1,962	(8)	—	3,045
Stock dividend	3,857	—	13	—	—	—	(13)	—
Stock option exercises	3,206,185	32	6,072	—	—	—	—	6,104
Provision for common stock warrants	—	—	2,566	—	—	—	—	2,566
Accretion of discount, preferred stock	—	—	(28)	—	—	—	—	(28)
Conversion of preferred stock	216,451	2	467	—	—	—	—	469
March 31, 2020	322,220,469	\$ 3,222	\$ 1,519,257	\$ 1,164	15,261,007	\$ (31,224)	\$ (1,383,299)	\$ 109,120
December 31, 2018	234,160,661	\$ 2,342	\$ 1,289,714	\$ 1,584	15,002,663	\$ (30,637)	\$ (1,260,290)	\$ 2,713
Net loss attributable to the Company	—	—	—	—	—	—	(30,952)	(30,952)
Other comprehensive loss	—	—	—	(210)	—	—	—	(210)
Stock-based compensation	324,073	3	2,494	—	—	—	—	2,497
Stock dividend	5,034	—	13	—	—	—	(13)	—
Issuance of common stock, net	10,000,000	100	23,398	—	—	—	—	23,498
Stock option exercises	47,467	—	81	—	—	—	—	81
Provision for common stock warrants	—	—	1,193	—	—	—	—	1,193
March 31, 2019	244,537,235	\$ 2,445	\$ 1,316,893	\$ 1,374	15,002,663	\$ (30,637)	\$ (1,291,255)	\$ (1,180)

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements

Plug Power Inc. and Subsidiaries
Condensed Consolidated Statements of Cash Flows
(In thousands)
(Unaudited)

	Three months ended March 31,	
	2020	2019
Operating Activities		
Net loss attributable to the Company	\$ (37,479)	\$ (30,952)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation of property, plant and equipment, and leased property	2,850	2,776
Amortization of intangible assets	175	175
Stock-based compensation	3,045	2,497
Provision for bad debts and other assets	—	307
Amortization of debt issuance costs and discount on convertible senior notes	2,716	2,469
Provision for common stock warrants	2,566	1,193
Change in fair value of common stock warrant liability	—	2,126
Changes in operating assets and liabilities that provide (use) cash:		
Accounts receivable	1,011	4,978
Inventory	(20,581)	(17,564)
Prepaid expenses, and other assets	(10,794)	1,018
Accounts payable, accrued expenses, and other liabilities	(2,933)	(2,781)
Deferred revenue	(591)	(2,505)
Net cash used in operating activities	(60,015)	(36,263)
Investing Activities		
Purchases of property, plant and equipment	(2,507)	(1,468)
Purchases for construction of leased property	(3,848)	(806)
Net cash used in investing activities	(6,355)	(2,274)
Financing Activities		
Proceeds from issuance of preferred stock, net of transaction costs	—	(3)
Proceeds from public offerings, net of transaction costs	—	23,498
Proceeds from exercise of stock options	6,104	81
Principal payments on long-term debt	(5,315)	(17,153)
Proceeds from long-term debt	—	84,761
Repayments of finance obligations	(5,730)	(53,534)
Increase in finance obligations	9,024	—
Net cash provided by financing activities	4,083	37,650
Effect of exchange rate changes on cash	1	(35)
Decrease in cash, cash equivalents and restricted cash	(62,286)	(922)
Cash, cash equivalents, and restricted cash beginning of period	369,500	110,153
Cash, cash equivalents, and restricted cash end of period	\$ 307,214	\$ 109,231
Supplemental disclosure of cash flow information		
Cash paid for interest	\$ 5,155	\$ 4,858
Summary of non-cash investing and financing activity		
Recognition of right of use asset	\$ 6,189	\$ —
Conversion of preferred stock to common stock	441	—

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements.

Notes to Interim Condensed Consolidated Financial Statements

Unless the context indicates otherwise, the terms “Company,” “Plug Power,” “we,” “our” or “us” as used herein refers to Plug Power Inc. and its subsidiaries.

1. Nature of Operations

Description of Business

As a leading provider of comprehensive hydrogen fuel cell turnkey solutions, Plug Power Inc., or the Company, is seeking to build a green hydrogen economy. The Company is focused on hydrogen and fuel cell systems that are used to power electric motors primarily in the electric mobility and stationary power markets, given the ongoing paradigm shift in the power, energy, and transportation industries to address climate change, energy security, and meet sustainability goals. Plug Power created the first commercially viable market for hydrogen fuel cell, or the HFC technology. As a result, the Company has deployed approximately 32,000 fuel cell systems, and has become the largest buyer of liquid hydrogen, having built and operated a hydrogen network across North America.

We are focused on proton exchange membrane, or PEM, fuel cell and fuel processing technologies, fuel cell/battery hybrid technologies, and associated hydrogen storage and dispensing infrastructure from which multiple products are available. A fuel cell is an electrochemical device that combines hydrogen and oxygen to produce electricity and heat without combustion. Hydrogen is derived from multiple sources. The majority of liquid hydrogen in the US is produced using the steam methane reforming process and utilizing by-product hydrogen from chlor alkali production. By-product hydrogen from a chlor alkali plant is considered to be low carbon hydrogen and in some cases, considered green hydrogen, depending on the source of electricity and geographic location. We source a significant amount of liquid hydrogen based on the chlor alkali process today. In addition, we are looking to increase the mix of our hydrogen usage to be green and zero carbon produced using renewables and electrolyzer with a goal to have over 50% of hydrogen used to be green by 2024. The Company develops complete hydrogen generation, delivery, storage and refueling solutions for customer locations. Currently, the Company obtains the majority of its hydrogen by purchasing it from fuel suppliers for resale to customers.

We provide and continue to develop commercially-viable hydrogen and fuel cell solutions . for industrial mobility applications (including electric forklifts and electric industrial vehicles) at multi-shift high volume manufacturing and high throughput distribution sites where we believe our products and services provide a unique combination of productivity, flexibility and environmental benefits. Additionally, we manufacture and sell fuel cell products to replace batteries and diesel generators in stationary backup power applications. These products have proven valuable with telecommunications, transportation and utility customers as robust, reliable and sustainable power solutions.

Our current products and services include:

GenDrive: GenDrive is our hydrogen fueled PEM fuel cell system providing power to material handling electric vehicles, including class 1, 2, 3 and 6 electric forklifts and ground support equipment;

GenFuel: GenFuel is our hydrogen fueling delivery, generation, storage and dispensing system;

GenCare: GenCare is our ongoing ‘internet of things’-based maintenance and on-site service program for GenDrive fuel cell systems, GenSure fuel cell systems, GenFuel hydrogen storage and dispensing products and ProGen fuel cell engines;

GenSure: GenSure is our stationary fuel cell solution providing scalable, modular PEM fuel cell power to support the backup and grid-support power requirements of the telecommunications, transportation, and utility sectors;

GenKey: GenKey is our vertically integrated “turn-key” solution combining either GenDrive or GenSure fuel cell power with GenFuel fuel and GenCare aftermarket service, offering complete simplicity to customers transitioning to fuel cell power; and

ProGen: ProGen is our fuel cell stack and engine technology currently used globally in mobility and stationary fuel cell systems, and as engines in electric delivery vans.

We provide our products worldwide through our direct product sales force, and by leveraging relationships with original equipment manufacturers and their dealer networks. We manufacture our commercially-viable products in Latham, NY and Spokane, WA.

Liquidity

Our cash requirements relate primarily to working capital needed to operate and grow our business, including funding operating expenses, growth in inventory to support both shipments of new units and servicing the installed base, growth in equipment leased to customers under long-term arrangements, funding the growth in our GenKey “turn-key” solution, which includes the installation of our customers’ hydrogen infrastructure as well as delivery of the hydrogen fuel, continued development and expansion of our products, payment of lease/financing obligations under sale/leaseback financings, and the repayment or refinancing of our long-term debt. Our ability to achieve profitability and meet future liquidity needs and capital requirements will depend upon numerous factors, including the timing and quantity of product orders and shipments; attaining and expanding positive gross margins across all product lines; the timing and amount of our operating expenses; the timing and costs of working capital needs; the timing and costs of developing marketing and distribution channels; the ability of our customers to obtain financing to support commercial transactions; our ability to obtain financing arrangements to support the sale or leasing of our products and services to customers and to repay or refinance our long-term debt, and the terms of such agreements that may require us to pledge or restrict substantial amounts of our cash to support these financing arrangements; the timing and costs of developing marketing and distribution channels; the timing and costs of product service requirements; the timing and costs of hiring and training product staff; the timing and costs of product development and introductions; the extent of our ongoing and new research and development programs; and changes in our strategy or our planned activities. If we are unable to fund our operations with positive cash flows and cannot obtain external financing, we may not be able to sustain future operations. As a result, we may be required to delay, reduce and/or cease our operations and/or seek bankruptcy protection.

We have experienced and continue to experience negative cash flows from operations and net losses. The Company incurred net losses attributable to common stockholders of \$37.5 million and \$31.0 million for the three months ended March 31, 2020, and 2019, respectively, and had an accumulated deficit of \$1.4 billion at March 31, 2020.

We have historically funded our operations primarily through public and private offerings of equity and debt, as well as short-term borrowings, long-term debt and project financings. The Company believes that its current working capital and cash anticipated to be generated from future operations, as well as borrowings from lending and project financing sources and proceeds from equity and debt offerings, including our at-the-market offering, will provide sufficient liquidity to fund operations for at least one year after the date the financial statements are issued. There is no guarantee that future funding will be available if and when required or at terms acceptable to the Company. This projection is based on our current expectations regarding new project financing and product sales and service, cost structure, cash burn rate and other operating assumptions.

During the three months ended March 31, 2020, net cash used in operating activities was \$60.0 million, consisting primarily of a net loss attributable to the Company of \$37.5 million, and net outflows from fluctuations in working capital and other assets and liabilities of \$33.9 million, offset by the impact of noncash charges of \$11.4 million. The changes in working capital primarily were related to decreases in accounts receivable and accounts payable, accrued expenses, and other liabilities offset by increases in deferred revenue, inventory, prepaid expenses and, other current assets. As of March 31, 2020, we had cash and cash equivalents of \$74.3 million and net working capital of \$125.4 million. By comparison, at December 31, 2019, we had cash and cash equivalents of \$139.5 million and net working capital of \$162.5 million.

Net cash used in investing activities for the three months ended March 31, 2020, totaled \$5.1 million and included purchases of property, plant and equipment and outflows associated with materials, labor, and overhead necessary to construct new leased property. Cash outflows related to equipment that we lease directly to customers are included in net cash used in investing activities. Net cash provided by financing activities for the three months ended March 31, 2020 totaled \$4.1 million and primarily resulted from proceeds from the exercise of stock options of \$6.1 million, increase in

finance obligations of \$9.0 million, offset by repayments of long-term debt of \$5.3 million and finance obligations of \$5.7 million.

Public and Private Offerings of Equity and Debt

Common Stock Issuance

On April 13, 2020, the Company entered into an At Market Issuance Sales Agreement, or the Sales Agreement, with B. Riley FBR, Inc., as sales agent, or FBR, pursuant to which the Company may offer and sell, from time to time through FBR, shares of Company common stock having an aggregate offering price of up to \$75.0 million. As of the date of this filing, the Company did not issue any shares of common stock pursuant to the Sales Agreement.

In December 2019, the Company issued and sold in a registered public offering an aggregate of 46 million shares of its common stock at a purchase price of \$2.75 per share for net proceeds of approximately \$120.4 million.

In March 2019, the Company issued and sold in a registered direct offering an aggregate of 10 million shares of its common stock at a purchase price of \$2.35 per share for net proceeds of approximately \$23.5 million.

Preferred Stock Issuance

In November 2018, the Company completed a private placement of an aggregate of 35,000 shares of the Company's Series E Redeemable Convertible Preferred Stock, par value \$0.01 per share, or the Series E Preferred Stock, for net proceeds of approximately \$30.9 million. In the third quarter of 2019, the Company redeemed 4,038 shares of Series E Preferred Stock totaling \$4.0 million. In the fourth quarter of 2019, the Company converted 30,962 shares of Series E Preferred Stock into 13.8 million shares of its common stock. In January 2020, the Company converted the remainder of the 500 shares of Series E Preferred Stock into 216,000 shares of its common stock. See Note 10, Redeemable Convertible Preferred Stock, for additional information.

Convertible Senior Notes

In September 2019, the Company issued a \$40.0 million in aggregate principal amount of 7.5% convertible senior note due in 2023, which we refer to herein as the \$40 million Convertible Senior Note. The Company's total obligation, net of interest accretion, due to the holder is \$48.0 million. The total net proceeds from this offering, after deducting costs of the issuance were \$39.1 million. As of March 31, 2020, the outstanding balance of the note, net of related discount and issuance costs, was \$40.4 million. See Note 8, Convertible Senior Notes, for more details.

In March 2018, the Company issued \$100.0 million in aggregate principal amount of 5.5% convertible senior notes due in 2023, which we refer to herein as the \$100 million Convertible Senior Notes. The total net proceeds from this offering, after deducting costs of the issuance, were approximately \$95.9 million. Approximately \$43.5 million of the proceeds were used for the cost of the Capped Call and the Common Stock Forward (as defined below), both of which are hedges related to the \$100 million Convertible Senior Notes. As of March 31, 2020, the outstanding balance of the notes, net of related accretion and issuance costs, was \$72.6 million. See Note 8, Convertible Senior Notes, for more details.

Operating and Finance Leases

The Company enters into sale/leaseback agreements with various financial institutions to facilitate the Company's commercial transactions with key customers. The Company sells certain fuel cell systems and hydrogen infrastructure to the financial institutions and leases the equipment back to support certain customer locations and to fulfill its varied Power Purchase Agreements (PPAs). Transactions completed under the sale/leaseback transactions are generally accounted for as operating leases and therefore the sales of the fuel cell systems and hydrogen infrastructure are recognized as revenue. In connection with certain sale/leaseback transactions, the financial institutions require the Company to maintain cash balances in restricted accounts securing the Company's finance obligations. Cash received from customers under the PPAs is used to make payments against the Company's finance obligations. As the Company performs under these agreements, the required restricted cash balances are released, according to a set schedule. The total remaining lease payments to

financial institutions under these agreements at March 31, 2020 was \$268.1 million, \$234.6 million of which were secured with restricted cash, security deposits backing letters of credit, and pledged service escrows.

The Company has varied master lease agreements with Wells Fargo Equipment Finance, Inc., or Wells Fargo, to finance the Company's commercial transactions with various customers. The Wells Fargo lease agreements were entered into during 2017, 2018, and 2019. No sale/leaseback transactions were entered with Wells Fargo during the three months ended March 31, 2020. Pursuant to the lease agreements, the Company sells fuel cell systems and hydrogen infrastructure to Wells Fargo and then leases them back and operates them at Walmart sites. The Company has a customer guarantee for a large portion of the transactions entered into in connection with such lease agreements. The Wells Fargo lease agreements required letters of credit for the unguaranteed portion totaling \$55.5 million as of March 31, 2020. The total remaining lease liabilities owed to Wells Fargo were \$108.0 million at March 31, 2020.

Over recent years, including in 2019, the Company has entered into master lease agreements with multiple institutions such as Key Equipment Finance (KeyBank), SunTrust Equipment Finance & Lease Corp. (now known as Truist), and First American Bancorp, Inc. (First American). In the first quarter of 2020, the Company entered into additional lease agreements with KeyBank and First American. Similar to the Wells Fargo lease agreements, the primary purpose of these agreements is to finance commercial transactions with varied customers. Most of the transactions with these financial institutions required cash collateral for the unguaranteed portions totaling \$179.1 million as of March 31, 2020. Similar to the Wells Fargo lease agreements, in many cases the Company has a customer guarantee for a large portion of the transactions. The total remaining lease liabilities owed to these financial institutions were \$160.1 million at March 31, 2020.

Long-Term Debt

In March 2019, the Company entered into a loan and security agreement (Loan Agreement) with Generate Lending, LLC (Generate Capital) pursuant to which the Company borrowed \$85.0 million (Term Loan Facility). The initial proceeds of the loan were used to pay in full the Company's long-term debt and accrued interest of \$17.6 million under the loan agreement with NY Green Bank, a Division of the New York State Energy Research & Development Authority, and terminate approximately \$50.3 million of certain equipment leases with Generate Plug Power SLB II, LLC as well as repurchase the associated leased equipment. In April 2019 and November 2019, the Company borrowed an additional \$15.0 million and \$20.0 million, respectively, under the Term Loan Facility with Generate Capital at 12% interest to fund working capital for ongoing deployments and other general corporate purposes. On March 31, 2020, the outstanding balance was \$107.5 million. The principal and interest payments are paid primarily by restricted cash. See Note 7, Long-Term Debt for additional information.

On May 6, 2020, the Company and Generate amended the Loan Agreement to, among other things, (i) provide an incremental term loan facility in the amount of \$50.0 million, which has been fully funded, (ii) provide for additional, incremental term loans in an aggregate amount not to exceed \$50.0 million, which are available to the Company in Generate Capital's sole discretion, (iii) reduce the interest rate on all loans to 9.50% from 12.00% per annum, and (iv) extend the maturity date to October 31, 2025 from October 6, 2022. Based on the current amortization schedule, the outstanding balance of \$157.5 million under the Term Loan Facility will be fully paid by March 31, 2024.

2. Summary of Significant Accounting Policies

Principles of Consolidation

The unaudited interim condensed consolidated financial statements include the financial statements of the Company and its wholly-owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

Interim Financial Statements

The accompanying unaudited interim condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (SEC). In the opinion of management, all

adjustments, which consist solely of normal recurring adjustments, necessary to present fairly, in accordance with U.S. generally accepted accounting principles (GAAP), the financial position, results of operations and cash flows for all periods presented, have been made. The results of operations for the interim periods presented are not necessarily indicative of the results that may be expected for the full year.

Certain information and footnote disclosures normally included in annual consolidated financial statements prepared in accordance with GAAP have been condensed or omitted. These unaudited interim condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements and notes thereto included in the Company's Annual Report on Form 10-K, filed for the fiscal year ended December 31, 2019.

The information presented in the accompanying unaudited interim condensed consolidated balance sheets as of December 31, 2019 has been derived from the Company's December 31, 2019 audited consolidated financial statements.

Leases

The Company is a lessee in noncancelable (1) operating leases, primarily related to sale/leaseback transactions with financial institutions for deployment of the Company's products at certain customer sites, and (2) finance leases, also primarily related to sale/leaseback transactions with financial institutions for similar commercial purposes. The Company accounts for leases in accordance with Accounting Standards Codification (ASC) Topic 842, *Leases* (ASC Topic 842), as amended.

The Company determines if an arrangement is or contains a lease at contract inception. The Company recognizes a right of use (ROU) asset and a lease liability (i.e. finance obligation) at the lease commencement date. For operating leases, the lease liability is initially measured at the present value of the unpaid lease payments at the lease commencement date. For finance leases, the lease liability is initially measured in the same manner and date as for operating leases, and is subsequently measured at amortized cost using the effective interest method.

Key estimates and judgments include how the Company determines (1) the discount rate it uses to discount the unpaid lease payments to present value, (2) the lease term and (3) the lease payments.

- ASC Topic 842 requires a lessee to discount its unpaid lease payments using the interest rate implicit in the lease or, if that rate cannot be readily determined, its incremental borrowing rate. Generally, the Company cannot determine the interest rate implicit in the lease because it does not have access to the lessor's estimated residual value or the amount of the lessor's deferred initial direct costs. Therefore, the Company generally uses its incremental borrowing rate as the discount rate for the lease. The Company's incremental borrowing rate for a lease is the rate of interest it would have to pay on a collateralized basis to borrow an amount equal to the lease payments under similar terms.
- The lease term for all of the Company's leases includes the noncancelable period of the lease, plus any additional periods covered by either a Company option to extend (or not to terminate) the lease that the Company is reasonably certain to exercise, or an option to extend (or not to terminate) the lease controlled by the lessor.
- Lease payments included in the measurement of the lease liability comprise fixed payments, and the exercise price of a Company option to purchase the underlying asset if the Company is reasonably certain to exercise the option.

The ROU asset is initially measured at cost, which comprises the initial amount of the lease liability adjusted for lease payments made at or before the lease commencement date, plus any initial direct costs incurred less any lease incentives received. For operating leases, the ROU asset is subsequently measured throughout the lease term at the carrying amount of the lease liability, plus initial direct costs, plus (minus) any prepaid (accrued) lease payments, less the unamortized balance of lease incentives received. Lease expense for lease payments is recognized on a straight-line basis over the lease term.

For finance leases, the ROU asset is subsequently amortized using the straight-line method from the lease commencement date to the earlier of the end of the useful life of the underlying asset or the end of the lease term unless the lease transfers ownership of the underlying asset to the Company or the Company is reasonably certain to exercise an option to purchase the underlying asset. In those cases, the ROU asset is amortized over the useful life of the underlying asset. Amortization of the ROU asset is recognized and presented separately from interest expense on the lease liability. The Company's leases do not contain variable lease payments.

ROU assets for operating and finance leases are periodically reviewed for impairment losses. The Company uses the long-lived assets impairment guidance in ASC Subtopic 360-10, *Property, Plant, and Equipment – Overall*, to determine whether an ROU asset is impaired, and if so, the amount of the impairment loss to recognize. No impairment losses have been recognized to date.

The Company monitors for events or changes in circumstances that require a reassessment of its leases. When a reassessment results in the remeasurement of a lease liability, a corresponding adjustment is made to the carrying amount of the corresponding ROU asset.

Operating and finance lease ROU assets are presented within leased property, net on the unaudited interim condensed consolidated balance sheets. The current portion of operating and finance lease liabilities is included in finance obligations within current liabilities and the long-term portion is presented in finance obligations within noncurrent liabilities on the unaudited interim condensed consolidated balance sheets.

The Company has elected not to recognize ROU assets and lease liabilities for short-term leases that have a lease term of 12 months or less. The Company has elected to apply the short-term lease recognition and measurement exemption for other classes of leased assets. The Company recognizes the lease payments associated with its short-term leases as an expense on a straight-line basis over the lease term.

Revenue Recognition

The Company enters into contracts that may contain one or a combination of fuel cell systems and infrastructure, installation, maintenance, spare parts, fuel delivery and other support services. Contracts containing fuel cell systems and related infrastructure may be sold or provided to customers under a PPA, discussed further below.

The Company does not include a right of return on its products other than rights related to standard warranty provisions that permit repair or replacement of defective goods. The Company accrues for anticipated standard warranty costs at the same time that revenue is recognized for the related product, or when circumstances indicate that warranty costs will be incurred, as applicable.

Revenue is measured based on the transaction price specified in a contract with a customer, subject to the allocation of the transaction price to distinct performance obligations as discussed below. The Company recognizes revenue when it satisfies a performance obligation by transferring a product or service to a customer.

The Company accounts for each distinct performance obligation within its arrangements as a separate unit of accounting if the items under the performance obligation have value to the customer on a standalone basis. The Company considers a performance obligation to be distinct and have a standalone value if the customer can benefit from the good or service either on its own or together with other resources readily available to the customer and the Company's promise to transfer the goods or service to the customer is separately identifiable from other promises in the contract. The Company allocates revenue to each distinct performance obligation based on relative standalone selling prices.

Payment terms for sales of fuel cells, infrastructure and service to customers are typically 30 to 90 days. Sale/leaseback transactions with financial institutions are invoiced and collected upon transaction closing. Service is prepaid upfront in a majority of the arrangements. The Company does not adjust the transaction price for a significant financing component when the performance obligation is expected to be fulfilled within a year.

In 2017, in separate transactions, the Company issued to each of Amazon and Walmart warrants to purchase shares of the Company's common stock. The Company presents the provision for common stock warrants within each revenue-related line item on the unaudited interim consolidated statements of operations. This presentation reflects a discount that those common stock warrants represent, and therefore revenue is net of these non-cash charges. The provision of common stock warrants is allocated to the relevant revenue-related line items based upon the expected mix of the revenue for each respective contract. See Note 11, Warrant Transaction Agreements, for more details.

Nature of goods and services

The following is a description of principal activities from which the Company generates its revenue.

(i) Sales of Fuel Cell Systems and Related Infrastructure

Revenue from sales of fuel cell systems and related infrastructure represents sales of our GenDrive units, GenSure stationary backup power units, as well as hydrogen fueling infrastructure.

The Company considers comparable list prices, as well as historical average pricing approaches to determine standalone selling prices for GenDrive fuel cells. The Company uses observable evidence from similar products in the market to determine standalone selling prices for GenSure stationary backup power units and hydrogen fueling infrastructure. The determination of standalone selling prices of the Company's performance obligations requires significant judgment, including continual assessment of pricing approaches and available observable evidence in the market. Once relative standalone selling prices are determined, the Company proportionately allocates the transaction price to each performance obligation within the customer arrangement. The allocated transaction price related to fuel cell systems and spare parts is recognized as revenue at a point in time which usually occurs at shipment (and occasionally upon delivery). Revenue on hydrogen infrastructure installations is generally recognized at the point at which transfer of control passes to the customer, which usually occurs upon customer acceptance of the hydrogen infrastructure. In certain instances, control on hydrogen infrastructure installations transfers to the customer over time, and the related revenue is recognized over time as the performance obligation is satisfied. The Company uses an input method to determine the amount of revenue to recognize during each reporting period based on the Company's efforts to satisfy the performance obligation.

(ii) Services performed on fuel cell systems and related infrastructure

Revenue from services performed on fuel cell systems and related infrastructure represents revenue earned on our service and maintenance contracts and sales of spare parts. The transaction price allocated to services as discussed above is generally recognized as revenue over time on a straight-line basis over the expected service period.

In substantially all of its commercial transactions, the Company sells extended maintenance contracts that generally provide for a five to ten year service period from the date of product installation in exchange for an up-front payment. Services include monitoring, technical support, maintenance and services that provide for 97% to 98% uptime of the fleet. These services are accounted for as a separate performance obligation, and accordingly, revenue generated from these transactions, subject to the proportional allocation of transaction price, is deferred and recognized in income over the term of the contract, generally on a straight-line basis. Additionally, the Company may enter into annual service and extended maintenance contracts that are billed monthly. Revenue generated from these transactions is recognized in income on a straight-line basis over the term of the contract. Costs are recognized as incurred over the term of the contract. Sales of spare parts are included within service revenue on the unaudited interim consolidated statements of operations. When costs are projected to exceed revenues over the life of the extended maintenance contract, an accrual for loss contracts is recorded. Costs are estimated based upon historical experience and consider the estimated impact of the Company's cost reduction initiatives. The actual results may differ from these estimates.

Upon expiration of the extended maintenance contracts, customers either choose to extend the contract or switch to purchasing spare parts and maintaining the fuel cell systems on their own.

(iii) Power Purchase Agreements

Revenue from PPAs primarily represents payments received from customers who make monthly payments to access the Company's GenKey solution.

When fuel cell systems and related infrastructure are provided to customers through a PPA, revenues associated with these agreements are treated as rental income and recognized on a straight-line basis over the life of the agreements.

In conjunction with entering into a PPA with a customer, the Company may enter into sale/leaseback transactions with third-party financial institutions, whereby the fuel cells, a majority of the related infrastructure and, in some cases, service are sold to the third-party financial institution and leased back to the Company through either an operating or finance lease.

Certain of the Company's sale/leaseback transactions with third-party financial institutions are required to be accounted for as finance leases. As a result, no upfront revenue was recognized at the closing of these transactions and a finance obligation for each lease was established. The fuel cell systems and related infrastructure that are provided to customers through these PPAs are classified as leased property, net in the unaudited interim condensed consolidated balance sheets. Costs to service the leased property, depreciation of the leased property, and other related costs are considered cost of PPA revenue in the unaudited interim condensed consolidated statements of operations. Interest cost associated with finance leases is presented within interest and other expense, net in the unaudited interim condensed consolidated statements of operations.

The Company also has sale/leaseback transactions with financial institutions, which were required to be accounted for as operating leases. The Company has lease obligations associated with these sale/leaseback agreements with financial institutions paid over the term of the agreements. At inception of these sale/lease transactions, the Company records a right of use asset value which is amortized over the term of the lease and recognized in conjunction with the interest expense on the obligation collectively as rental expense. Rental expense is recognized on a straight-line basis over the life of the agreements and is characterized as cost of PPA revenue on the unaudited interim condensed consolidated statements of operations.

The Company includes all lease and non-lease components (i.e., maintenance services) related to PPAs within PPA revenue.

To recognize revenue, the Company, as lessee, is required to determine whether each sale/leaseback arrangement meets operating lease criteria. As part of the assessment of these criteria, the Company estimates certain key inputs to the associated calculations such as: 1) discount rate it uses to discount the unpaid lease payments to present value and 2) useful life of the underlying asset(s):

- ASC Topic 842 requires a lessee to discount its unpaid lease payments using the interest rate implicit in the lease or, if that rate cannot be readily determined, its incremental borrowing rate. Generally, the Company cannot determine the interest rate implicit in its leases because it does not have access to the lessor's estimated residual value or the amount of the lessor's deferred initial direct costs. Therefore, the Company generally uses its incremental borrowing rate to estimate the discount rate for each lease.
- In order for a lease to be classified as an operating lease, the lease term cannot exceed 75% (major part) of the estimated useful life of the leased asset. The average estimated useful life of the fuel cells is 10 years, and the average estimated useful life of the hydrogen infrastructure is 20 years. These estimated useful lives are compared to the term of each lease to ensure that 75% of the estimated useful life of the assets is not exceeded which allows the Company to meet the operating lease criteria.

(iv) Fuel Delivered to Customers

Revenue associated with fuel delivered to customers represents the sale of hydrogen to customers that has been purchased by the Company from a third party or generated on site. Fuel is delivered to customers under stand-ready arrangement, with no long-term commitment.

The Company purchases hydrogen fuel from suppliers in certain cases (and produces hydrogen onsite) and sells to its customers upon delivery. Revenue and cost of revenue related to this fuel is recorded as dispensed and is included in the respective “Fuel delivered to customers” lines on the unaudited interim consolidated statements of operations.

Contract costs

The Company expects that incremental commission fees paid to employees as a result of obtaining sales contracts are recoverable and therefore the Company capitalizes them as contract costs.

Capitalized commission fees are amortized on a straight-line basis over the period of time which the transfer of goods or services to which the assets relate occur, typically ranging from 5 to 10 years. Amortization of the capitalized commission fees is included in selling, general and administrative expenses.

The Company recognizes the incremental costs of obtaining contracts as an expense when incurred if the amortization period of the assets that the Company otherwise would have recognized is one year or less. These costs are included in selling, general and administrative expenses.

Cash Equivalents

For purposes of the unaudited interim condensed consolidated statements of cash flows, the Company considers all highly-liquid debt instruments with original maturities of three months or less to be cash equivalents. At March 31, 2020, cash equivalents consisted of money market accounts. The Company’s cash and cash equivalents are deposited with financial institutions located in the United States and may at times exceed insured limits.

Equity Instruments - Common Stock Warrants

Common stock warrants that meet certain applicable requirements of ASC Subtopic 815-40, *Derivatives and Hedging – Contracts in Entity’s Own Equity*, and other related guidance, including the ability of the Company to settle the warrants without the issuance of registered shares or the absence of rights of the grantee to require cash settlement, are accounted for as equity instruments. The Company classifies these equity instruments within additional paid-in capital on the unaudited interim condensed consolidated balance sheets.

Common stock warrants accounted for as equity instruments represent the warrants issued to Amazon and Walmart as discussed in Note 11, Warrant Transaction Agreements. The Company adopted FASB Accounting Standards Update 2019-08, *Compensation – Stock Compensation (Topic 718) and Revenue from Contracts with Customers (Topic 606)* (ASU 2019-08), which requires entities to measure and classify share-based payment awards granted to a customer by applying the guidance under Topic 718, as of January 1, 2019. As a result, the amount recorded as a reduction of revenue is measured based on the grant-date fair value of the warrants. Except for the third tranche, the fair value of all warrants was measured at January 1, 2019, the adoption date of ASU 2019-08. For the third tranche, the fair value will be determined when the second tranche vests.

In order to calculate warrant charges, the Company uses the Black-Scholes pricing model, which requires key inputs including volatility and risk-free interest rate and certain unobservable inputs for which there is little or no market data, requiring the Company to develop its own assumptions. The Company estimates the fair value of unvested warrant shares, considered to be probable of vesting. Based on this estimated fair value, the Company determines warrant charges, which are recorded as a reduction of revenue in the unaudited interim condensed consolidated statement of operations.

Use of Estimates

The unaudited interim condensed consolidated financial statements of the Company have been prepared in conformity with U.S. generally accepted accounting principles, which require management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the unaudited interim condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Reclassifications

Reclassifications are made, whenever necessary, to prior period financial statements to conform to the current period presentation.

Recent Accounting Pronouncements

Recently Adopted Accounting Pronouncements

In June 2016, *Accounting Standards Update (ASU) 2016-13, Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, was issued. Also, In April 2019, *Accounting Standards Update (ASU) 2019-04, Codification Improvements to Topic 326, Financial Instruments—Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments*, was issued to make improvements to updates 2016-01, *Financial Instruments – Overall* (Subtopic 825-10), 2016-13, *Financial Instruments – Credit Losses* (Topic 326) and 2017-12, *Derivatives and Hedging* (Topic 815). ASU 2016-13 significantly changes how entities account for credit losses for financial assets and certain other instruments, including trade receivables and contract assets, that are not measured at fair value through net income. The ASU requires a number of changes to the assessment of credit losses, including the utilization of an expected credit loss model, which requires consideration of a broader range of information to estimate expected credit losses over the entire lifetime of the asset, including losses where probability is considered remote. Additionally, the standard requires the estimation of lifetime expected losses for trade receivables and contract assets that are classified as current. The Company adopted these standards effective January 1, 2020 and determined the impact of the standards to be immaterial to the consolidated financial statements.

In April 2019, *Accounting Standards Update (ASU) 2019-04, Codification Improvements to Topic 326, Financial Instruments—Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments*, was issued to make improvements to updates 2016-01, *Financial Instruments – Overall* (Subtopic 825-10), 2016-13, *Financial Instruments – Credit Losses* (Topic 326) and 2017-12, *Derivatives and Hedging* (Topic 815). The Company adopted this standard effective January 1, 2020 and determined the impact of this standard to be immaterial to the consolidated financial statements.

In January 2017, *Accounting Standards Update (ASU) 2017-04, Intangibles – Goodwill and Other (Topic 350)*, was issued to simplify how an entity is required to test goodwill for impairment by eliminating Step 2 from the goodwill impairment test. Step 2 measures a goodwill impairment loss by comparing the implied fair value of a reporting unit's goodwill with the carrying amount of that goodwill. The Company adopted this standard effective January 1, 2020.

In August 2016, *Accounting Standards Update (ASU) 2016-15, Statement of Cash Flows (Topic 230)s: Classification of Certain Cash Receipts and Cash Payments*, was issued to reduce the existing diversity in practice in how certain cash receipts and cash payments are presented and classified in the statement of cash flows. The Company adopted this standard in 2019 and determined the impact of this standard to be immaterial to the consolidated financial statements.

Recently Issued and Not Yet Adopted Accounting Pronouncements

In March 2020, *Accounting Standards Update (ASU) 2020-04, Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*, was issued to provide temporary optional expedients and exceptions to the GAAP guidance on contract modifications and hedge accounting to ease the financial reporting burdens related to the expected market transition from the London Interbank Offered Rate (LIBOR) and other interbank offered rates to alternative reference rates. This update is effective starting March 12, 2020 and the Company may elect to apply the amendments prospectively through December 31, 2022. The Company is evaluating the adoption method as well as the impact this update will have on the consolidated financial statements.

In March 2020, *Accounting Standards Update (ASU) 2020-03, Codification Improvements to Financial Instruments*, was issued to make various codification improvements to financial instruments to make the standards easier to understand and apply by eliminating inconsistencies and providing clarifications. This update will be effective at various

dates as described in this ASU. The Company is evaluating the adoption method as well as the impact this update will have on the consolidated financial statements.

3. Earnings Per Share

Basic earnings per common stock are computed by dividing net loss attributable to common stockholders by the weighted average number of common stock outstanding during the reporting period. Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue common stock (such as stock options, unvested restricted stock, common stock warrants, and preferred stock) were exercised or converted into common stock or resulted in the issuance of common stock (net of any assumed repurchases) that then shared in the earnings of the Company, if any. This is computed by dividing net earnings by the combination of dilutive common stock equivalents, which is comprised of shares issuable under outstanding warrants, the conversion of preferred stock, and the Company's share-based compensation plans, and the weighted average number of common stock outstanding during the reporting period. Since the Company is in a net loss position, all common stock equivalents would be considered to be anti-dilutive and are, therefore, not included in the determination of diluted earnings per share. Accordingly, basic and diluted loss per share are the same.

The dilutive potential shares common stock is summarized as follows:

	At March 31,	
	2020	2019
Stock options outstanding (1)	19,803,872	21,109,998
Restricted stock outstanding (2)	4,600,227	2,372,347
Common stock warrants (3)	110,573,392	115,824,142
Preferred stock (4)	2,782,075	17,933,591
Convertible Senior Notes (5)	59,133,896	43,630,020
Number of dilutive potential shares of common stock	196,893,462	200,870,098

- (1) During the three months ended March 31, 2020 and 2019, the Company granted zero and 25,000 stock options, respectively.
- (2) During the three months ended March 31, 2020 and 2019, the Company granted zero and 25,000 shares of restricted stock, respectively.
- (3) In April 2017, the Company issued warrants to acquire up to 55,286,696 of the Company's common stock as part of a transaction agreement with Amazon, subject to certain vesting events, as described in Note 11, Warrant Transaction Agreements. Of these warrants issued, none have been exercised as of March 31, 2020.

In July 2017, the Company issued warrants to acquire up to 55,286,696 of the Company's common stock as part of a transaction agreement with Walmart, subject to certain vesting events, as described in Note 11, Warrant Transaction Agreements. Of these warrants issued, none have been exercised as of March 31, 2020.

- (4) The preferred stock amount represents the dilutive potential on the shares of common stock as a result of the conversion of the Series C Redeemable Convertible Preferred Stock (Series C Preferred Stock) and Series E Redeemable Preferred Stock (Series E Preferred Stock), based on the conversion price of each preferred stock as of March 31 2020, and 2019, respectively. Of the 10,431 shares of Series C Preferred Stock issued on May 16, 2013, 7,811 shares had been converted to common stock as of March 31, 2020, with the remainder still outstanding. On November 1, 2018, the Company issued 35,000 shares of Series E redeemable convertible preferred stock (Series E Preferred Stock). As of December 31, 2019, 30,462 shares of the Series E Preferred Stock had been converted to common stock and 4,038 shares were redeemed for cash. The remaining 500 shares of Series E Preferred Stock were converted to common stock in January 2020.

- (5) In March 2018, the Company issued \$100.0 million in aggregate principal amount of 5.5% Convertible Senior Notes. In September 2019, the Company issued a \$40.0 million in aggregate principal amount of 7.5% Convertible Senior Note. See Note 8, Convertible Senior Notes.

4. Inventory

Inventory as of March 31, 2020 and December 31, 2019 consisted of the following (in thousands):

	March 31, 2020	December 31, 2019
Raw materials and supplies - production locations	\$ 59,086	\$ 48,011
Raw materials and supplies - customer locations	10,423	9,241
Work-in-process	20,234	12,529
Finished goods	3,229	2,610
Inventory	<u>\$ 92,972</u>	<u>\$ 72,391</u>

5. Leased Property

Leased property at March 31, 2020 and December 31, 2019 consisted of the following (in thousands):

	March 31, 2020	December 31, 2019
Right of use assets - operating	\$ 209,924	\$ 198,068
Right of use assets - finance	41,475	41,475
Capitalized costs of lessor assets	44,107	41,465
Less: accumulated depreciation	(42,704)	(36,268)
Leased property, net	<u>\$ 252,802</u>	<u>\$ 244,740</u>

6. Intangible Assets

The gross carrying amount and accumulated amortization of the Company's acquired identifiable intangible assets as of March 31, 2020 were as follows (in thousands):

	Weighted Average Amortization Period	Gross Carrying Amount	Accumulated Amortization	Total
Acquired technology	10 years	\$ 8,163	\$ (2,971)	\$ 5,192
Customer relationships	10 years	260	(156)	104
Trademark	5 years	60	(60)	—
		<u>\$ 8,483</u>	<u>\$ (3,187)</u>	<u>\$ 5,296</u>

The gross carrying amount and accumulated amortization of the Company's acquired identifiable intangible assets as of December 31, 2019 were as follows (in thousands):

	Weighted Average Amortization Period	Gross Carrying Amount	Accumulated Amortization	Total
Acquired technology	10 years	\$ 8,244	\$ (2,815)	\$ 5,429
Customer relationships	10 years	260	(150)	110
Trademark	5 years	60	(60)	0
		<u>\$ 8,564</u>	<u>\$ (3,025)</u>	<u>\$ 5,539</u>

The change in the gross carrying amount of the acquired technology from December 31, 2019 to March 31, 2020 is due to changes in foreign currency translation.

In the second quarter of 2019, the Company acquired intellectual property from EnergyOr for \$1.5 million. In addition, the Company agreed to pay the sellers a royalty based on future sales of relevant applications, not to exceed \$3.0 million, by May 22, 2025. These royalties are added to the intangible asset balance, as incurred.

As part of the agreement to acquire the intellectual property from AFC, the Company shall pay AFC milestone payments not to exceed \$2.9 million in total, if certain milestones associated with the production of components related to the acquired technology are met before April 2021. As of March 31, 2020, the Company paid \$0.4 million and accrued \$0.5 million in relation to the aforementioned milestones.

Amortization expense for acquired identifiable intangible assets was \$0.2 million for the three months ended March 31, 2020 and 2019. Estimated amortization expense for subsequent years was as follows (in thousands):

Remainder of 2020	\$ 595
2021	793
2022	793
2023	793
2024 and thereafter	2,322
Total	<u>\$ 5,296</u>

7. Long-Term Debt

In March 2019, the Company, and its subsidiaries Emerging Power Inc. and Emergent Power Inc., entered into a loan and security agreement, as amended (the Loan Agreement), with Generate Lending, LLC (Generate Capital), providing for a secured term loan facility in the amount of \$100.0 million (the Term Loan Facility). The Company borrowed \$85.0 million under the Loan Agreement on the date of closing and borrowed an additional \$15.0 million in April 2019. A portion of the initial proceeds of the loan was used to pay in full the Company's long-term debt with NY Green Bank, a Division of the New York State Energy Research & Development Authority, including accrued interest of \$17.6 million (the Green Bank Loan), and terminate approximately \$50.3 million of certain equipment leases with Generate Plug Power SLB II, LLC and repurchase the associated leased equipment. In connection with this transaction, the Company recognized a loss on extinguishment of debt of approximately \$0.5 million during the three months ended March 31, 2019. This loss was recorded in interest and other expenses, net in the Company's unaudited interim condensed consolidated statement of operations. Additionally, \$1.7 million was paid to an escrow account related to additional fees due in connection with the Green Bank Loan if the Company does not meet certain New York State employment and fuel cell deployment targets by March 2021. Amount escrowed is recorded in long-term other assets on the Company's unaudited interim condensed consolidated balance sheets as of March 31, 2020. The Company presently expects to meet the targets as required under the arrangement. Additionally, in November 2019, the Company borrowed an incremental \$20.0 million at 12% interest to fund working capital for ongoing deployments and other general corporate purposes. On March 31, 2020, the outstanding balance under the Term Loan Facility was \$107.5 million with a 12% interest rate.

On May 6, 2020, the Company and Generate amended the Loan Agreement to, among other things, (i) provide an incremental term loan facility in the amount of \$50.0 million, which has been fully funded, (ii) provide for additional, incremental term loans in an aggregate amount not to exceed \$50.0 million, which are available to the Company in Generate Capital's sole discretion, (iii) reduce the interest rate on all loans to 9.50% from 12.00% per annum, and (iv) extend the maturity date to October 31, 2025 from October 6, 2022.

The Loan Agreement includes covenants, limitations, and events of default customary for similar facilities. Interest and a portion of the principal amount is payable on a quarterly basis. Principal payments will be funded in part by releases of restricted cash, as described in Note 15, Commitments and Contingencies. Based on the current amortization schedule, the outstanding balance of \$157.5 million under the Term Loan Facility will be fully paid by March 31, 2024. If addition term loans are funded, the entire then-outstanding principal balance of the Term Loan Facility, together with all accrued and unpaid interest, will be due and payable on the maturity date of October 31, 2025.

All obligations under the Loan Agreement are unconditionally guaranteed by Emerging Power Inc. and Emergent Power Inc. The Term Loan Facility is secured by substantially all of the Company's and the guarantor subsidiaries' assets, including, among other assets, all intellectual property, all securities in domestic subsidiaries and 65% of the securities in foreign subsidiaries, subject to certain exceptions and exclusions.

The Loan Agreement contains covenants, including, among others, (i) the provision of annual and quarterly financial statements, management rights and insurance policies and (ii) restrictions on incurring debt, granting liens, making acquisitions, making loans, paying dividends, dissolving, and entering into leases and asset sales and (iii) compliance with a collateral coverage covenant. The Loan Agreement also provides for events of default, including, among others, payment, bankruptcy, covenant, representation and warranty, change of control, judgment and material adverse effect defaults at the discretion of the lender. As of March 31, 2020, the Company was in compliance with all the covenants.

The Loan Agreement provides that if there is an event of default due to the Company's insolvency or if the Company fails to perform in any material respect the servicing requirements for fuel cell systems under certain customer agreements, which failure would entitle the customer to terminate such customer agreement, replace the Company or withhold the payment of any material amount to the Company under such customer agreement, then Generate Capital has the right to cause Proton Services Inc., a wholly owned subsidiary of the Company, to replace the Company in performing the maintenance services under such customer agreement.

As of March 31, 2020, the Term Loan Facility requires the principal balance at the end of each of the following years amortization may not exceed the following (in thousands):

December 31, 2020	\$ 86,159
December 31, 2021	59,373

As of May 6, 2020, the Term Loan Facility, including the incremental borrowing subsequent to March 31, 2020, as described above, requires the principal balance at the end of each of the following years amortization may not exceed the following (in thousands):

December 31, 2020	\$ 125,687
December 31, 2021	89,301
December 31, 2022	51,478
December 31, 2023	16,863

8. Convertible Senior Notes

\$40 Million Convertible Senior Note

In September 2019, the Company issued a \$40.0 million aggregate principal amount of 7.5% Convertible Senior Note due on January 5, 2023 in exchange for net proceeds of \$39.1 million, in a private placement to an accredited investor pursuant to Rule 144A under the Securities Act of 1933, as amended, or the Securities Act. There are no required principal payments prior to maturity of the note. Upon maturity of the note, the Company is required to repay 120% of \$40.0 million, or \$48.0 million. The note bears interest at 7.5% per annum, payable quarterly in arrears on January 5, April 5, July 5 and October 5 of each year beginning on October 5, 2019 and will mature on January 5, 2023 unless earlier converted or repurchased in accordance with its terms. The note is unsecured and does not contain any financial covenants or any restrictions on the payment of dividends, or the issuance or repurchase of common stock by the Company.

The note has an initial conversion rate of 387.5969, which is subject to adjustment in certain events. The initial conversion rate is equivalent to an initial conversion price of approximately \$2.58 per share of common stock. The holder of the note may convert at its option at any time until the close of business on the second scheduled trading day immediately prior to the maturity date for shares of the Company's common stock, subject to certain limitations. In addition, the note will be automatically converted if (1) the daily volume-weighted average price per share of common stock exceeds 175% of the conversion price (as described above) on each of the 20 consecutive VWAP trading days (as defined in the note) beginning after the issue date of the note and (2) certain equity conditions (as defined in the note) are satisfied. Only if both criteria are met is the note automatically converted. Upon either the voluntary or automatic conversion of the note, the Company will deliver shares of common stock based on (1) the then-effective conversion rate and (2) the original principal amount of \$40.0 million and not the maturity principal amount of \$48.0 million. The note does not allow cash settlement (entirely or partially) upon conversion. As such, the Company uses the if-converted method for calculating any potential dilutive effect of the conversion option on diluted earnings per share.

The Company concluded the conversion features did not require bifurcation. Specifically, while the Company determined that (i) the conversion features were not clearly and closely related to the host contracts, (ii) the note (i.e., hybrid instrument) is not remeasured at fair value under otherwise applicable GAAP with changes in fair value reported in earnings as they occur and (iii) the conversion features, if freestanding, would meet the definition of a derivative, the Company concluded such conversion features meet the equity scope exception, and therefore, the conversion features are not required to be bifurcated from the note.

If the Company undergoes a fundamental change prior to the maturity date, subject to certain limitations, the holder may require the Company to repurchase for cash all or a portion of the note at a cash repurchase price equal to any accrued and unpaid interest on the note (or portion thereof), plus the greater of (1) 115% of the maturity principal amount of \$48.0 million (or portion thereof) and (2) 110% of the product of (i) the conversion rate in effect as of the trading day immediately preceding the date of such fundamental change; (ii) the principal amount of the \$40.0 million note to be repurchased divided by \$1,000; and (iii) the average of the daily volume-weighted average price per share of the Company's common stock over the five consecutive VWAP trading days immediately before the effective date of such fundamental change.

In addition, with the consent of the holder of the note, subject to certain limitations, the Company may redeem all or any portion of the note, at the Company's option, at a cash redemption price equal to any accrued and unpaid interest on the note (or portion thereof), plus the greater of (1) 105% of the maturity principal amount of \$48.0 million (or portion thereof); and (2) 115% of the product of (i) the conversion rate in effect as of the trading day immediately preceding the related redemption date; (ii) the principal amount of the \$40.0 million note to be redeemed divided by \$1,000; and (iii) the arithmetic average of the daily volume-weighted average price per share of common stock over the five consecutive VWAP trading days immediately before the related redemption date.

While the Company concluded the fundamental change redemption option represents an embedded derivative, the Company concluded the value of the embedded derivative to be immaterial given the likelihood of the occurrence of a fundamental change was deemed to be remote. As related to the call option, the Company concluded the call option was clearly and closely related to the host contract, and therefore, did not meet the definition of an embedded derivative.

The Company concluded the total debt discount at issuance of the note equaled approximately \$8.0 million. This debt discount was attributed to the fact that upon maturity, the Company is required to repay 120% of \$40.0 million, or \$48.0 million. In addition, the related debt issuance costs were \$1.0 million. The debt discount was recorded as debt issuance cost (presented as contra debt in the unaudited interim condensed consolidated balance sheets) and is being amortized to interest expense over the term of the note using the effective interest rate method.

The note consisted of the following (in thousands):

	March 31, 2020	December 31, 2019
Principal amounts:		
Principal at maturity	\$ 48,000	\$ 48,000
Unamortized debt discount	(6,800)	(7,400)
Unamortized debt issuance costs	(891)	(969)
Net carrying amount	<u>\$ 40,309</u>	<u>\$ 39,631</u>

Based on the closing price of the Company's common stock of \$3.54 on March 31, 2020, the if-converted value of the notes was greater than the principal amount. The estimated fair value of the note at March 31, 2020 and December 31, 2019 was approximately \$57.3 million and \$53.5 million, respectively. The Company utilized a Monte Carlo simulation model to estimate the fair value of the convertible debt. The simulation model is designed to capture the potential settlement features of the convertible debt, in conjunction with simulated changes in the Company's stock price over the term of the note, incorporating a volatility assumption of 70%. This is considered a Level 3 fair value measurement.

\$100 Million Convertible Senior Notes

In March 2018, the Company issued \$100.0 million in aggregate principal amount of 5.5% Convertible Senior Notes due on March 15, 2023 in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act. There are no required principal payments prior to maturity of the notes.

The total net proceeds from the notes were as follows:

	Amount (in thousands)
Principal amount	\$ 100,000
Less initial purchasers' discount	(3,250)
Less cost of related capped call and common stock forward	(43,500)
Less other issuance costs	(894)
Net proceeds	\$ 52,356

The notes bear interest at 5.5%, payable semi-annually in cash on March 15 and September 15 of each year. The notes will mature on March 15, 2023, unless earlier converted or repurchased in accordance with their terms. The notes are unsecured and do not contain any financial covenants or any restrictions on the payment of dividends, or the issuance or repurchase of common stock by the Company.

Each \$1,000 principal amount of the notes is convertible into 436.3002 shares of the Company's common stock, which is equivalent to a conversion price of approximately \$2.29 per share, subject to adjustment upon the occurrence of specified events. Holders of these notes may convert their notes at their option at any time prior to the close of the last business day immediately preceding September 15, 2022, only under the following circumstances:

- 1) during any calendar quarter (and only during such calendar quarter), if the last reported sale price of the Company's common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day;
- 2) during the five business day period after any five consecutive trading day period (the measurement period) in which the trading price (as defined in the indenture governing the notes) per \$1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate for the notes on each such trading day;
- 3) if the Company calls any or all of the notes for redemption, at any time prior to the close of business on the second scheduled trading day immediately preceding the redemption date; or
- 4) upon the occurrence of certain specified corporate events, such as a beneficial owner acquiring more than 50% of the total voting power of the Company's common stock, recapitalization of the Company, dissolution or liquidation of the Company, or the Company's common stock ceases to be listed on an active market exchange.

On or after September 15, 2022, holders may convert all or any portion of their notes at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date regardless of the foregoing conditions.

Upon conversion of the notes, the Company will pay or deliver, as the case may be, cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock, at the Company's election. While the Company plans to settle the principal amount of the notes in cash subject to available funding at time of settlement, we currently use the if-converted method for calculating any potential dilutive effect of the conversion option on diluted net income per share, subject to meeting the criteria for using the treasury stock method in future periods.

The conversion rate will be subject to adjustment in some events but will not be adjusted for any accrued or unpaid interest. Holders who convert their notes in connection with certain corporate events that constitute a “make-whole fundamental change” per the indenture governing the notes or in connection with a redemption will be, under certain circumstances, entitled to an increase in the conversion rate. In addition, if the Company undergoes a fundamental change prior to the maturity date, holders may require the Company to repurchase for cash all or a portion of its notes at a repurchase price equal to 100% of the principal amount of the repurchased notes, plus accrued and unpaid interest.

The Company may not redeem the notes prior to March 20, 2021. The Company may redeem for cash all or any portion of the notes, at the Company’s option, on or after March 20, 2021 if the last reported sale price of the Company’s common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive), including at least one of the three trading days immediately preceding the date on which the Company provides notice of redemption, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company provides notice of redemption at a redemption price equal to 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date.

In accounting for the issuance of the notes, the Company separated the notes into liability and equity components. The initial carrying amount of the liability component of approximately \$58.2 million, net of costs incurred, was calculated by measuring the fair value of a similar liability that does not have an associated convertible feature. The carrying amount of the equity component of approximately \$37.7 million, net of costs incurred, representing the conversion option, was determined by deducting the fair value of the liability component from the par value of the notes. The difference between the principal amount of the notes and the liability component (the debt discount) is amortized to interest expense using the effective interest method over the term of the notes. The effective interest rate is approximately 16.0%. The equity component of the notes is included in additional paid-in capital in the unaudited interim condensed consolidated balance sheets and is not remeasured as long as it continues to meet the conditions for equity classification.

We incurred transaction costs related to the issuance of the notes of approximately \$4.1 million, consisting of initial purchasers' discount of approximately \$3.3 million and other issuance costs of \$0.9 million. In accounting for the transaction costs, we allocated the total amount incurred to the liability and equity components using the same proportions as the proceeds from the notes. Transaction costs attributable to the liability component were approximately \$2.4 million, were recorded as debt issuance cost (presented as contra debt in the unaudited interim condensed consolidated balance sheets) and are being amortized to interest expense over the term of the notes. The transaction costs attributable to the equity component were approximately \$1.7 million and were netted with the equity component in stockholders' equity.

The notes consisted of the following (in thousands):

	March 31, 2020	December 31, 2019
Principal amounts:		
Principal	\$ 100,000	\$ 100,000
Unamortized debt discount (1)	(25,985)	(27,818)
Unamortized debt issuance costs (1)	(1,446)	(1,567)
Net carrying amount	\$ 72,569	\$ 70,615
Carrying amount of the equity component (2)	\$ 37,702	\$ 37,702

- 1) Included in the unaudited interim condensed consolidated balance sheets within the \$100.0 million Convertible Senior Notes, net and amortized over the remaining life of the notes using the effective interest rate method.
- 2) Included in the unaudited interim condensed consolidated balance sheets within additional paid-in capital, net of \$1.7 million in equity issuance costs and associated income tax benefit of \$9.2 million.

Based on the closing price of the Company’s common stock of \$3.54 on March 31, 2020, the if-converted value of the notes was greater than the principal amount. The estimated fair value of the notes at March 31, 2020 and December

31, 2019 was approximately \$147.4 million and \$135.3 million, respectively. The Company utilized a Monte Carlo simulation model to estimate the fair value of the convertible debt. The simulation model is designed to capture the potential settlement features of the convertible debt, in conjunction with simulated changes in the Company's stock price over the term of the notes, incorporating a volatility assumption of 70%. This is considered a Level 3 fair value measurement.

Capped Call

In conjunction with the issuance of the \$100 million Convertible Senior Notes, the Company entered into capped call options (Capped Call), on the Company's common stock with certain counterparties at a price of \$16.0 million. The net cost incurred in connection with the Capped Call has been recorded as a reduction to additional paid-in capital in the unaudited interim condensed consolidated balance sheets.

The Capped Call is generally expected to reduce or offset the potential dilution to the Company's common stock upon any conversion of the \$100 million Convertible Senior Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of the converted notes, as the case may be, with such reduction and/or offset subject to a cap based on the cap price. The cap price of the Capped Call transactions is initially \$3.82 per share, which represents a premium of 100% over the last then-reported sale price of the Company's common stock of \$1.91 per share on the date of the transaction and is subject to certain adjustments under the terms of the Capped Call. The Capped Call becomes exercisable if the conversion option is exercised.

By entering into the Capped Call, the Company expects to reduce the potential dilution to its common stock (or, in the event the conversion is settled in cash, to provide a source of cash to settle a portion of its cash payment obligation) in the event that at the time of conversion its stock price exceeds the conversion price under the \$100 million Convertible Senior Notes.

Common Stock Forward

In connection with the sale of the \$100 million Convertible Senior Notes, the Company also entered into a forward stock purchase transaction, or the Common Stock Forward, pursuant to which the Company agreed to purchase 14,397,906 shares of its common stock for settlement on or about March 15, 2023. The number of shares of common stock that the Company will ultimately repurchase under the Common Stock Forward is subject to customary anti-dilution adjustments. The Common Stock Forward is subject to early settlement or settlement with alternative consideration in the event of certain corporate transactions.

The net cost incurred in connection with the Common Stock Forward of \$27.5 million has been recorded as an increase in treasury stock in the unaudited interim condensed consolidated balance sheets. The related shares were accounted for as a repurchase of common stock.

The fair values of the Capped Call and Common Stock Forward are not remeasured.

9. Stockholders' Equity

Preferred Stock

The Company has authorized 5.0 million shares of preferred stock, par value \$0.01 per share. The Company's certificate of incorporation provides that shares of preferred stock may be issued from time to time in one or more series. The Company's Board of Directors is authorized to fix the voting rights, if any, designations, powers, preferences, qualifications, limitations and restrictions thereof, applicable to the shares of each series.

The Company has authorized Series A Junior Participating Cumulative Preferred Stock, par value \$0.01 per share. As of March 31, 2020 and December 31, 2019, there were no shares of Series A Junior Participating Cumulative Preferred Stock issued and outstanding. See Note 10, Redeemable Convertible Preferred Stock, for a description of the Company's Series C Preferred Stock and Series E Preferred Stock.

Common Stock and Warrants

The Company has one class of common stock, par value \$.01 per share. Each share of the Company's common stock is entitled to one vote on all matters submitted to stockholders.

In March 2019, the Company issued and sold in a registered direct offering an aggregate of 10 million shares of the Company's common stock at a purchase price of \$2.35 per share. The net proceeds to the Company were approximately \$23.5 million. There were 306,959,462 and 303,378,515 shares of common stock outstanding as of March 31, 2020 and December 31, 2019, respectively.

During 2017, additional warrants to purchase up to 110,573,392 shares of common stock were issued in connection with transaction agreements with Amazon and Walmart, as discussed in Note 13, Warrant Transaction Agreements. At both March 31, 2020 and December 31, 2019, 26,188,434 of these warrants have vested and are therefore exercisable. These warrants are measured at fair value and are classified as equity instruments on the unaudited interim condensed consolidated balance sheets.

At Market Issuance Sales Agreement

On April 13, 2020, the Company entered into the Sales Agreement with FBR as sales agent, pursuant to which the Company may offer and sell, from time to time through FBR, shares of Company common stock having an aggregate offering price of up to \$75.0 million. As of the date of this filing, the Company has not issued any shares of common stock pursuant to the Sales Agreement.

10. Redeemable Convertible Preferred Stock

Series E Preferred Stock

In November 2018, the Company issued an aggregate of 35,000 shares of the Company's Series E Preferred Stock in a private placement to certain accredited investors in reliance on Section 4(a)(2) of the Securities Act. The Company received net proceeds of approximately \$30.9 million, after deducting placement agent fees and expenses payable by the Company. The Company is required to redeem the Series E Preferred Stock in thirteen monthly installments in the amount of \$2.7 million each from May 2019 through May 2020. The Company had zero and 500 shares of Series E Preferred Stock outstanding at March 31, 2020 and 2019, respectively. The remaining 500 shares were converted to common stock in January 2020.

Series C Preferred Stock

The Company had 2,620 shares of Series C Preferred Stock outstanding at both March 31, 2020 and December 31, 2019. The holder of the Series C Preferred Stock is entitled to receive dividends at a rate of 8.0% per annum, based on the original issue price per share of \$248.794, payable in equal quarterly installments in cash or in shares of common stock, at the Company's option. As of March 31, 2020 and December 31, 2019, respectively, all dividends have been paid in shares of common stock. Each share of Series C Preferred Stock is convertible into shares of common stock with the number of shares of common stock issuable upon conversion determined by dividing the original issue price per share of \$248.794 by the conversion price in effect at the time the shares are converted, provided that such conversion price shall not be less than \$0.1554 per share. The conversion price of the Series C Preferred Stock as of March 31, 2020 and December 31, 2019 was \$0.2343. The shares of Series C Preferred Stock vote together with the common stock on an as-converted basis on all matters.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, or other deemed liquidation event, the holder of the Series C Preferred Stock will be entitled to be paid an amount per share equal to the greater of (i) the original issue price, plus any accrued but unpaid dividends or (ii) the amount per share that would have been payable had all shares of the Series C Preferred Stock been converted to shares of common stock immediately prior to such liquidation event. The Series C Preferred Stock is redeemable at the election of the holder of the Series C Stock or the Company. If the redemption is at the election of the holders of the Series C Preferred Stock, the redemption price will be the original issue price plus any accrued and unpaid dividends. If the redemption is at the election of the

Company, the redemption price will be a per share price equal to the greater of (i) the original issue price per share plus any accrued and unpaid dividends and (ii) the fair market value of a single share of Series C Preferred Stock.

In April 2020, 870 shares of Series C Preferred Stock were converted to 923,819 shares of common stock.

11. Warrant Transaction Agreements

Amazon Transaction Agreement

On April 4, 2017, the Company and Amazon entered into a Transaction Agreement (the Amazon Transaction Agreement), pursuant to which the Company agreed to issue to Amazon.com NV Investment Holdings LLC, a wholly owned subsidiary of Amazon, warrants to acquire up to 55,286,696 shares of the Company's common stock (the Amazon Warrant Shares), subject to certain vesting events described below. The Company and Amazon entered into the Amazon Transaction Agreement in connection with existing commercial agreements between the Company and Amazon with respect to the deployment of the Company's GenKey fuel cell technology at Amazon distribution centers. The existing commercial agreements contemplate, but do not guarantee, future purchase orders for the Company's fuel cell technology. The vesting of the Amazon Warrant Shares is linked to payments made by Amazon or its affiliates (directly or indirectly through third parties) pursuant to the existing commercial agreements.

The majority of the Amazon Warrant Shares will vest based on Amazon's payment of up to \$600.0 million to the Company in connection with Amazon's purchase of goods and services from the Company. The first tranche of 5,819,652 Amazon Warrant Shares vested upon the execution of the Amazon Transaction Agreement. Accordingly, \$6.7 million, the fair value of the first tranche of Amazon Warrant Shares, was recognized as selling, general and administrative expense during 2017. All future provision for common stock warrants is measured based on their grant-date fair value and recorded as a charge against revenue. The second tranche of 29,098,260 Amazon Warrant Shares will vest in four installments of 7,274,565 Amazon Warrant Shares each time Amazon or its affiliates, directly or indirectly through third parties, make an aggregate of \$50.0 million in payments for goods and services to the Company, up to payments totaling \$200.0 million in the aggregate. The exercise price for the first and second tranches of Amazon Warrant Shares is \$1.1893 per share. After Amazon has made payments to the Company totaling \$200.0 million, the third tranche of 20,368,784 Amazon Warrant Shares will vest in eight installments of 2,546,098 Amazon Warrant Shares each time Amazon or its affiliates, directly or indirectly through third parties, make an aggregate of \$50.0 million in payments for goods and services to the Company, up to payments totaling \$400.0 million in the aggregate. The exercise price of the third tranche of Amazon Warrant Shares will be an amount per share equal to ninety percent (90%) of the 30-day volume weighted average share price of the common stock as of the final vesting date of the second tranche of Amazon Warrant Shares. The Amazon Warrant Shares are exercisable through April 4, 2027. The Amazon Warrant Shares provide for net share settlement that, if elected by the holders, will reduce the number of shares issued upon exercise to reflect net settlement of the exercise price. The Amazon Warrant Shares provide for certain adjustments that may be made to the exercise price and the number of shares of common stock issuable upon exercise due to customary anti-dilution provisions based on future events. These warrants are classified as equity instruments.

At March 31, 2020 and December 31, 2019, 20,368,782 of the Amazon Warrant Shares had vested. The amount of provision for common stock warrants recorded as a reduction of revenue for the Amazon Warrant during the three months ended March 31, 2020 and 2019 was \$1.3 million and \$0.5 million, respectively.

Walmart Transaction Agreement

On July 20, 2017, the Company and Walmart entered into a Transaction Agreement (the Walmart Transaction Agreement), pursuant to which the Company agreed to issue to Walmart a warrant to acquire up to 55,286,696 shares of the Company's common stock, subject to certain vesting events (the Walmart Warrant Shares). The Company and Walmart entered into the Walmart Transaction Agreement in connection with existing commercial agreements between the Company and Walmart with respect to the deployment of the Company's GenKey fuel cell technology across various Walmart distribution centers. The existing commercial agreements contemplate, but do not guarantee, future purchase orders for the Company's fuel cell technology. The vesting of the warrant shares is linked to payments made by Walmart or its affiliates (directly or indirectly through third parties) pursuant to transactions entered into after January 1, 2017 under existing commercial agreements.

The majority of the Walmart Warrant Shares will vest based on Walmart's payment of up to \$600.0 million to the Company in connection with Walmart's purchase of goods and services from the Company. The first tranche of 5,819,652 Walmart Warrant Shares vested upon the execution of the Walmart Transaction Agreement. Accordingly, \$10.9 million, the fair value of the first tranche of Walmart Warrant Shares, was recorded as a provision for common stock warrants and presented as a reduction to revenue on the unaudited interim condensed consolidated statements of operations during 2017. All future provision for common stock warrants is measured based on their grant-date fair value and recorded as a charge against revenue. The second tranche of 29,098,260 Walmart Warrant Shares will vest in four installments of 7,274,565 Walmart Warrant Shares each time Walmart or its affiliates, directly or indirectly through third parties, make an aggregate of \$50.0 million in payments for goods and services to the Company, up to payments totaling \$200.0 million in the aggregate. The exercise price for the first and second tranches of Walmart Warrant Shares is \$2.1231 per share. After Walmart has made payments to the Company totaling \$200.0 million, the third tranche of 20,368,784 Walmart Warrant Shares will vest in eight installments of 2,546,098 Walmart Warrant Shares each time Walmart or its affiliates, directly or indirectly through third parties, make an aggregate of \$50.0 million in payments for goods and services to the Company, up to payments totaling \$400.0 million in the aggregate. The exercise price of the third tranche of Walmart Warrant Shares will be an amount per share equal to ninety percent (90%) of the 30-day volume weighted average share price of the common stock as of the final vesting date of the second tranche of Walmart Warrant Shares, provided that, with limited exceptions, the exercise price for the third tranche will be no lower than \$1.1893. The Walmart Warrant Shares are exercisable through July 20, 2027.

The Walmart Warrant Shares provide for net share settlement that, if elected by the holders, will reduce the number of shares issued upon exercise to reflect net settlement of the exercise price. The Walmart Warrant Shares provide for certain adjustments that may be made to the exercise price and the number of shares of common stock issuable upon exercise due to customary anti-dilution provisions based on future events. These warrants are classified as equity instruments.

At March 31, 2020 and December 31, 2019, 5,819,652 of the Walmart Warrant Shares had vested. The amount of provision for common stock warrants recorded as a reduction of revenue for the Walmart Warrant during the three months ended March 31, 2020 and 2019 was \$0.9 million and \$0.7 million, respectively.

12. Revenue

Disaggregation of revenue

The following table provides information about disaggregation of revenue (in thousands):

Major products/services lines

	Three months ended March 31,	
	2020	2019
Sales of fuel cell systems	\$ 14,651	\$ 1,241
Sale of hydrogen installations and other infrastructure	5,736	1,303
Services performed on fuel cell systems and related infrastructure	6,521	6,343
Power Purchase Agreements	6,496	6,110
Fuel delivered to customers	7,333	6,582
Other	76	—
Net revenue	<u>\$ 40,813</u>	<u>\$ 21,579</u>

Contract balances

The following table provides information about receivables, contract assets and contract liabilities from contracts with customers (in thousands):

	March 31, 2020	December 31, 2019
Accounts receivable	\$ 24,437	\$ 25,448
Contract assets	20,581	13,251
Contract liabilities	45,129	43,480

Contract assets relate to contracts for which revenue is recognized on a straight-line basis, however billings escalate over the life of a contract. Contract assets also include amounts recognized as revenue in advance of billings to customers, which are dependent upon the satisfaction of another performance obligation. These amounts are included within prepaid expenses and other current assets on the accompanying unaudited interim condensed consolidated balance sheets.

The contract liabilities relate to the advance consideration received from customers for services that will be recognized over time (primarily fuel cell and related infrastructure services). Contract liabilities also include advance consideration received from customers prior to delivery of products. These amounts are included within deferred revenue on the accompanying unaudited interim condensed consolidated interim balance sheets.

Significant changes in the contract assets and the contract liabilities balances during the period are as follows (in thousands):

Contract assets	Three months ended March 31, 2020
Transferred to receivables from contract assets recognized at the beginning of the period	\$ (141)
Revenue recognized and not billed as of the end of the period	7,471
Net change in contract assets	7,330
Contract liabilities	Three months ended March 31, 2020
Increases due to cash received, net of amounts recognized as revenue during the period	\$ 7,442
Revenue recognized that was included in the contract liability balance as of the beginning of the period	(5,793)
Net change in contract liabilities	\$ 1,649

Estimated future revenue

The following table includes estimated revenue expected to be recognized in the future (sales of fuel cell systems and hydrogen installations are expected to be recognized as revenue within one year; sales of services and PPAs are expected to be recognized as revenue over five to seven years) related to performance obligations that are unsatisfied (or partially unsatisfied) at the end of the reporting period, excluding provision for common stock warrants as it is not readily estimable as it depends on the valuation of the common stock warrants when revenue is recognized (in thousands):

	<u>March 31,</u>
	<u>2020</u>
Sales of fuel cell systems	\$ 76,433
Sale of hydrogen installations and other infrastructure	69,440
Services performed on fuel cell systems and related infrastructure	97,530
Power Purchase Agreements	142,002
Other rental income	4,531
Total estimated future revenue	<u>\$ 389,936</u>

Contract costs

Contract costs consist of capitalized commission fees and other expenses related to obtaining or fulfilling a contract.

Capitalized contract costs at March 31, 2020 and December 31, 2019 were \$0.5 million and \$0.5, respectively. Expense related to the amortization of capitalized contract costs was not significant for the three months ended March 31, 2020 and 2019.

13. Income Taxes

The Company did not record any income tax expense or benefit for the three months ended March 31, 2020 or 2019. The Company has not changed its overall conclusion with respect to the need for a valuation allowance against its net deferred tax assets, which remain fully reserved.

The remaining net deferred tax asset generated from the Company's net operating loss has been offset by a full valuation allowance because it is more likely than not that the tax benefits of the net operating loss carry forward will not be realized. The Company also recognizes accrued interest and penalties related to unrecognized tax benefits, if any, as a component of income tax expense.

14. Fair Value Measurements

During 2020, the Company had no financial instruments measured at fair value on a recurring basis.

The following table summarizes the financial instruments measured at fair value on a recurring basis in the unaudited interim condensed consolidated balance sheets (in thousands) at December 31, 2019:

	<u>Total</u>	<u>Quoted Prices in Active Markets for Identical Items (Level 1)</u>	<u>Significant Other Observable Inputs (Level 2)</u>	<u>Significant Other Unobservable Inputs (Level 3)</u>
Common stock warrant liability	\$ (2,126)	\$ —	\$ —	\$ (2,126)

The Company's common stock warrant liability represents the only asset or liability classified financial instrument measured at fair value on a recurring basis in the unaudited interim condensed consolidated balance sheets. The fair value measurement is determined by using Level 3 inputs due to the lack of active and observable markets that can be used to price identical assets. Level 3 inputs are unobservable inputs and should be used to determine fair value only when observable inputs are not available. Unobservable inputs should be developed based on the best information available in the circumstances, which might include internally generated data and assumptions being used to price the asset or liability.

Fair value of the common stock warrant liability is based on the Black-Scholes pricing model which is based, in part, upon unobservable inputs for which there is little or no market data, requiring the Company to develop its own assumptions.

The Company used the following assumptions to measure the fair value of its liability-classified common stock warrants:

	Three months ended March 31, 2019
Risk-free interest rate	2.51%
Volatility	74.93%
Expected average term	0.53

There was no expected dividend yield for the warrants granted.

15. Commitments and Contingencies

Lessor Obligations

As of March 31, 2020, the Company had noncancelable operating leases (as lessor), primarily associated with assets deployed at customer sites. These leases expire over the next one to seven years. Leases contain termination clauses with associated penalties, the amount of which cause the likelihood of cancellation to be remote.

Future minimum lease payments under noncancelable operating leases (with initial or remaining lease terms in excess of one year) as of March 31, 2020 were as follows (in thousands):

Remainder of 2020	\$ 27,806
2021	30,993
2022	23,632
2023	19,952
2024	16,508
2025 and thereafter	\$ 27,643
Total future minimum lease payments	<u>\$ 146,534</u>

Lessee Obligations

As of March 31, 2020, the Company had operating and finance leases, as lessee, primarily associated with sale/leaseback transactions that are partially secured by restricted cash, security deposits and pledged escrows (see also Note 1, Nature of Operations) as summarized below. These leases expire over the next one to nine years. Minimum rent payments under operating and finance leases are recognized on a straight-line basis over the term of the lease. Leases contain termination clauses with associated penalties, the amount of which cause the likelihood of cancellation to be remote.

In prior periods, the Company entered into sale/leaseback transactions that were accounted for as finance leases and reported as part of finance obligations. The outstanding balance of finance obligations related to sale/leaseback

transactions at March 31, 2020 and December 31, 2019 was \$29.8 million and \$31.7 million, respectively. The fair value of the finance obligation approximated the carrying value as of both March 31, 2020 and December 31, 2019.

The Company has sold future services to be performed associated with certain sale/leaseback transactions and recorded the balance as a finance obligation. The outstanding balance of this obligation at March 31, 2020 was \$114.6 million, \$17.0 million and \$97.6 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheets. The outstanding balance of this obligation at December 31, 2019 was \$35.6 million, \$6.0 million and \$29.6 million of which was classified as short-term and long-term, respectively. The amount is amortized using the effective interest method. The fair value of this finance obligation approximated the carrying value as of March 31, 2020.

The Company has a finance lease associated with its property and equipment in Latham, New York. Liabilities relating to this lease of \$2.2 million has been recorded as a finance obligation in the unaudited interim condensed consolidated balance sheets as of March 31, 2020 and December 31, 2019. The fair value of this finance obligation approximated the carrying value as of March 31, 2020.

Future minimum lease payments under operating and finance leases (with initial or remaining lease terms in excess of one year) as of March 31, 2020 were as follows (in thousands):

	Operating Leases	Finance Leases	Other Leased Property	Total Finance Obligations
Remainder of 2020	\$ 34,998	\$ 7,596	\$ 285	\$ 42,879
2021	46,669	9,276	407	56,352
2022	44,139	4,975	390	49,504
2023	39,074	3,149	366	42,589
2024	39,079	16,154	373	55,606
2025 and thereafter	40,250	—	1,174	41,424
Total future minimum lease payments	244,209	41,150	2,995	288,354
Less imputed lease interest	(66,624)	(11,299)	(838)	(78,761)
Sale of future services	114,625	—	—	114,625
Total lease liabilities	\$ 292,210	\$ 29,851	\$ 2,157	\$ 324,218

Rental expense for all operating leases was \$12.6 million and \$6.0 million for the three months ended March 31, 2020 and 2019, respectively.

The gross profit on sale/leaseback transactions for all operating leases was \$5.3 million and zero for the three months ended March 31, 2020 and 2019, respectively. Right of use assets obtained in exchange for new operating lease liabilities was \$16.2 million and zero for the three months ended March 31, 2020 and 2019, respectively.

At both March 31, 2020 and December 31, 2019, security deposits associated with sale/leaseback transactions were \$6.0 million and were included in other assets in the unaudited interim condensed consolidated balance sheets.

Other information related to the operating leases are presented in the following tables:

	Three months ended March 31, 2020	Three months ended March 31, 2019
Cash payments (in thousands)	\$ 12,522	\$ 5,728

	As of March 31, 2020	2019
Weighted average remaining lease term (years)	5.52	4.92
Weighted average discount rate	12.1%	12.1%

Finance lease costs include amortization of the right of use assets (i.e., depreciation expense) and interest on lease liabilities (i.e., interest and other expense, net in the unaudited interim consolidated statement of operations). Finance lease costs were as follows (in thousands):

	Three months ended March 31, 2020	Three months ended March 31, 2019
Amortization of right of use asset	\$ 870	\$ 808
Interest on finance obligations	638	2,091
Total finance lease cost	\$ 1,508	\$ 2,899

Right of use assets obtained in exchange for new finance lease liabilities was zero for both the three months ended March 31, 2020 and 2019.

Other information related to the finance leases are presented in the following tables:

	Three months ended March 31, 2020	Three months ended March 31, 2019
Cash payments (in thousands)	\$ 2,610	\$ 54,170

	As of March 31,	
	2020	2019
Weighted average remaining lease term (years)	3.68	3.53
Weighted average discount rate	8.1%	10.8%

Restricted Cash

In connection with certain of the above noted sale/leaseback agreements, cash of \$129.7 million was restricted as of March 31, 2020, which restricted cash will be released over the lease term. As of March 31, 2020, the Company also had certain letters of credit backed by security deposits totaling \$101.6 million for the above noted sale/leaseback agreements.

The Company also had letters of credit in the aggregate amount of \$0.5 million at March 31, 2020 associated with a finance obligation from the sale/leaseback of its building. We consider cash collateralizing this letter of credit as restricted cash.

Litigation

Legal matters are defended and handled in the ordinary course of business. The Company has established accruals for matters for which management considers a loss to be probable and reasonably estimable. It is the opinion of management that facts known at the present time do not indicate that such litigation, after taking into account insurance coverage and the aforementioned accruals, will have a material adverse impact on our results of operations, financial position, or cash flows.

Concentrations of Credit Risk

Concentrations of credit risk with respect to receivables exist due to the limited number of select customers with whom the Company has initial commercial sales arrangements. To mitigate credit risk, the Company performs appropriate evaluation of a prospective customer's financial condition.

At March 31, 2020, three customers comprised approximately 85.2% of the total accounts receivable balance. At December 31, 2019, two customers comprised approximately 63.4% of the total accounts receivable balance.

For the three months ended March 31, 2020, 65.9% of total consolidated revenues were associated primarily with two customers. For the three months ended March 31, 2019, 56.2% of total consolidated revenues were associated primarily with two customers. For purposes of assigning a customer to a sale/leaseback transaction completed with a financial institution, the Company considers the end user of the assets to be the ultimate customer.

16. Subsequent Events

On May 6, 2020, the Company and Generate amended the Loan Agreement to, among other things, (i) provide an incremental term loan in the amount of \$50.0 million, which has been fully funded, (ii) provide for additional, incremental term loans in an aggregate amount not to exceed \$50.0 million, which are available to the Company in Generate Capital's sole discretion, (iii) reduce the interest rate on all loans to 9.50% from 12.00% per annum, and (iv) extend the maturity date to October 31, 2025 from October 6, 2022. Based on the current amortization schedule, the outstanding balance of \$157.5 million under the Term Loan Facility will be fully paid by March 31, 2024.

On April 6, 2020, the Company purchased a convertible note in United Hydrogen Group (UHG), a supplier of hydrogen fuel of the Company, from APV Ventures for \$8.0 million. The note is payable in the form of hydrogen fuel delivered, cash payments, or conversion to equity in UHG, or a combination thereof. The interest rate on the note is 7.0%. The purchase price was comprised of \$1.0 million in cash and 1.8 million shares of the Company's common stock.

Item 2 — Management’s Discussion and Analysis of Financial Condition and Results of Operations

The following discussion should be read in conjunction with our accompanying unaudited interim condensed consolidated financial statements and notes thereto included within this report, and our audited consolidated financial statements and notes thereto included in our Annual Report on Form 10-K, filed for the fiscal year ended December 31, 2019. In addition to historical information, this Quarterly Report on Form 10-Q and the following discussion contain statements that are not historical facts and are considered forward-looking within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act). These forward-looking statements contain projections of our future results of operations or of our financial position or state other forward-looking information. In some cases you can identify these statements by forward-looking words such as “anticipate,” “believe,” “could,” “continue,” “estimate,” “expect,” “intend,” “may,” “should,” “will,” “would,” “plan,” “projected” or the negative of such words or other similar words or phrases. We believe that it is important to communicate our future expectations to our investors. However, there may be events in the future that we are not able to accurately predict or control and that may cause our actual results to differ materially from the expectations we describe in our forward-looking statements. Investors are cautioned not to unduly rely on forward-looking statements because they involve risks and uncertainties, and actual results may differ materially from those discussed as a result of various factors, including, but not limited to:

- the risk that we continue to incur losses and might never achieve or maintain profitability;
- the risk that we will need to raise additional capital to fund our operations and such capital may not be available to us;
- the risk of dilution to our stockholders and/or stock price should we need to raise additional capital;
- the risk that our lack of extensive experience in manufacturing and marketing products may impact our ability to manufacture and market products on a profitable and large-scale commercial basis;
- the risk that unit orders may not ship, be installed and/or converted to revenue, in whole or in part;
- the risk that a loss of one or more of our major customers, or if one of our major customers delays payment of or is unable to pay its receivables, a material adverse effect could result on our financial condition;
- the risk that a sale of a significant number of shares of stock could depress the market price of our common stock;
- the risk that our convertible senior notes, if settled in cash, could have a material effect on our financial results;
- the risk that our convertible note hedges may affect the value of our convertible senior notes and our common stock;
- the risk that negative publicity related to our business or stock could result in a negative impact on our stock value and profitability;
- the risk of potential losses related to any product liability claims or contract disputes;
- the risk of loss related to an inability to maintain an effective system of internal controls;
- our ability to attract and maintain key personnel;
- the risks related to the use of flammable fuels in our products;
- the risk that pending orders may not convert to purchase orders, in whole or in part;
- the cost and timing of developing, marketing and selling our products;
- the risks of delays in or not completing our product development goals;
- our ability to obtain financing arrangements to support the sale or leasing of our products and services to customers;
- our ability to achieve the forecasted gross margin on the sale of our products;
- the cost and availability of fuel and fueling infrastructures for our products;
- the risks, liabilities, and costs related to environmental, health and safety matters;
- the risk of elimination of government subsidies and economic incentives for alternative energy products;
- market acceptance of our products and services, including GenDrive, GenSure and GenKey systems;
- our ability to establish and maintain relationships with third parties with respect to product development, manufacturing, distribution and servicing, and the supply of key product components;
- the cost and availability of components and parts for our products;
- the risk that possible new tariffs could have a material adverse effect on our business;
- our ability to develop commercially viable products;

- our ability to reduce product and manufacturing costs;
- our ability to successfully market, distribute and service our products and services internationally;
- our ability to improve system reliability for our products;
- competitive factors, such as price competition and competition from other traditional and alternative energy companies;
- our ability to protect our intellectual property;
- the risk of dependency on information technology on our operations and the failure of such technology;
- the cost of complying with current and future federal, state and international governmental regulations;
- our subjectivity to legal proceedings and legal compliance;
- the risks associated with past and potential future acquisitions; and
- the volatility of our stock price

The risks included here are not exhaustive, and additional factors could adversely affect our business and financial performance, including factors and risks discussed in the section titled “Risk Factors” included under Part I, Item 1A, below. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time and it is not possible for management to predict all such risk factors, nor can we assess the impact of all such risk factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. While forward-looking statements reflect our good faith beliefs, they are not guarantees of future performance. These forward-looking statements speak only as of the date on which the statements were made. Except as may be required by applicable law, we do not undertake or intend to update any forward-looking statements after the date of this Quarterly Report on Form 10-Q.

References in this Annual Report on Form 10-K to “Plug Power,” the “Company,” “we,” “our” or “us” refer to Plug Power Inc., including as the context requires, its subsidiaries.

Overview

As a leading provider of comprehensive hydrogen fuel cell turnkey solutions, Plug Power Inc., or the Company, is seeking to build a green hydrogen economy. The Company is focused on hydrogen and fuel cell systems that are used to power electric motors primarily in the electric mobility and stationary power markets, given the ongoing paradigm shift in the power, energy, and transportation industries to address climate change, energy security, and meet sustainability goals. Plug Power created the first commercially viable market for hydrogen fuel cell, or the HFC technology. As a result, the Company has deployed approximately 32,000 fuel cell systems, and has become the largest buyer of liquid hydrogen, having built and operated a hydrogen network across North America.

We are focused on proton exchange membrane, or PEM, fuel cell and fuel processing technologies, fuel cell/battery hybrid technologies, and associated hydrogen storage and dispensing infrastructure from which multiple products are available. A fuel cell is an electrochemical device that combines hydrogen and oxygen to produce electricity and heat without combustion. Hydrogen is derived from multiple sources. The majority of liquid hydrogen in the US is produced using the steam methane reforming process and utilizing by-product hydrogen from chlor alkali production. By-product hydrogen from a chlor alkali plant is considered to be low carbon hydrogen and in some cases, considered green hydrogen, depending on the source of electricity and geographic location. We source a significant amount of liquid hydrogen based on the chlor alkali process today. In addition, we are looking to increase the mix of our hydrogen usage to be green and zero carbon produced using renewables and electrolyzer with a goal to have over 50% of hydrogen used to be green by 2024. The Company develops complete hydrogen generation, delivery, storage and refueling solutions for customer locations. Currently, the Company obtains the majority of its hydrogen by purchasing it from fuel suppliers for resale to customers.

We provide and continue to develop commercially-viable hydrogen and fuel cell solutions for industrial mobility applications (including electric forklifts and electric industrial vehicles) at multi-shift high volume manufacturing and high throughput distribution sites where we believe our products and services provide a unique combination of productivity, flexibility and environmental benefits. Additionally, we manufacture and sell fuel cell products to replace batteries and

diesel generators in stationary backup power applications. These products have proven valuable with telecommunications, transportation and utility customers as robust, reliable and sustainable power solutions.

Our current products and services include:

GenDrive: GenDrive is our hydrogen fueled PEM fuel cell system providing power to material handling electric vehicles, including class 1, 2, 3 and 6 electric forklifts and ground support equipment;

GenFuel: GenFuel is our hydrogen fueling delivery, generation, storage and dispensing system;

GenCare: GenCare is our ongoing ‘internet of things’-based maintenance and on-site service program for GenDrive fuel cell systems, GenSure fuel cell systems, GenFuel hydrogen storage and dispensing products and ProGen fuel cell engines;

GenSure: GenSure is our stationary fuel cell solution providing scalable, modular PEM fuel cell power to support the backup and grid-support power requirements of the telecommunications, transportation, and utility sectors;

GenKey: GenKey is our vertically integrated “turn-key” solution combining either GenDrive or GenSure fuel cell power with GenFuel fuel and GenCare aftermarket service, offering complete simplicity to customers transitioning to fuel cell power; and

ProGen: ProGen is our fuel cell stack and engine technology currently used globally in mobility and stationary fuel cell systems, and as engines in electric delivery vans.

We provide our products worldwide through our direct product sales force, and by leveraging relationships with original equipment manufacturers and their dealer networks. We manufacture our commercially-viable products in Latham, NY and Spokane, WA.

To promote fuel cell adoption and maintain post-sale customer satisfaction, we offer a range of service and support options through extended maintenance contracts. Additionally, customers may waive our service option, and choose to service their systems independently. Substantially all of our fuel cells sold in recent years were bundled with maintenance contracts.

Recent Developments

As a result of the COVID-19 pandemic, state governments—including those in New York and Washington, where our manufacturing facilities are located—have issued orders requiring businesses that do not conduct essential services to temporarily close their physical workplaces to employees and customers. We are currently deemed an essential business and, as a result, are exempt from these state orders, in their current form. In March 2020, we put in place a number of protective measures in response to the COVID-19 outbreak. These measures include the canceling of all commercial air travel and all other non-critical travel, requesting that employees limit non-essential personal travel, eliminating all but essential third-party access to our facilities, enhancing our facilities’ janitorial and sanitary procedures, encouraging employees to work from home to the extent their job function enables them to do so, encouraging the use of virtual employee meetings, and providing staggered shifts and social distancing measures for those employees associated with manufacturing and service operations.

We cannot predict at this time the full extent to which COVID-19 will impact our business, results and financial condition, which will depend on many factors. We are staying in close communication with our manufacturing facilities, employees, customers, suppliers and partners, and acting to mitigate the impact of this dynamic and evolving situation, but there is no guarantee that we will be able to do so. Although as of the date hereof, we have not observed any material impacts to our supply of components, the situation is fluid. Many of the parts for our products are sourced from suppliers in China and the manufacturing situation in China remains variable. Supply chain disruptions could reduce the availability of key components, increase prices or both. Some of our customers, such as certain automotive manufacturers, have suspended operations at their facilities due to COVID-19. Accordingly, while those customers continue to pay for the leasing and servicing of our products, they are not purchasing hydrogen fuel. Other customers are essential businesses and remain in operation. Certain of these customers, such as Walmart, significantly increased their use of units and hydrogen fuel consumption as a result of COVID-19. In the quarter ended March 31, 2020, our services and power purchase agreement margins were negatively impacted by incremental service costs associated with increased usage of units at some of our primary customer sites. In addition, future changes in applicable government orders or regulations, or changes in the interpretation of existing orders or regulations, could result in further disruptions to our business that may materially and adversely affect our financial condition and results of operations.

On May 6, 2020, the Company amended its Loan Agreement with Generate Capital in order to, among other things, (i) provide an incremental term loan facility in the amount of \$50.0 million, which has been fully funded, (ii) provide for additional, incremental term loans in an aggregate amount not to exceed \$50.0 million, which are available to the Company in Generate Capital's sole discretion, (iii) reduce the interest rate on all loans to 9.50% from 12.00% per annum, and (iv) extend the maturity date to October 31, 2025 from October 6, 2022. Based on the current amortization schedule, the outstanding balance of \$157.5 million under the Term Loan Facility will be fully paid by March 31, 2024.

On April 6, 2020, the Company purchased a convertible note of United Hydrogen Group (UHG), a supplier of hydrogen fuel to the Company, from APV Ventures Fund I GP, LLP for \$8.0 million. The note is payable in the form of hydrogen fuel delivered, cash payments, conversion to equity in UHG, or a combination thereof. The interest rate on the note is 7.0%. The purchase price was comprised of \$1.0 million in cash and 1.8 million shares of the Company's common stock.

Results of Operations

Our primary sources of revenue are from sales of fuel cell systems and related infrastructure, services performed on fuel cell systems and related infrastructure, Power Purchase Agreements (PPAs), and fuel delivered to customers. Revenue from sales of fuel cell systems and related infrastructure represents sales of our GenDrive units, GenSure stationary backup power units, as well as hydrogen fueling infrastructure. Revenue from services performed on fuel cell systems and related infrastructure represents revenue earned on our service and maintenance contracts and sales of spare parts. Revenue from PPAs primarily represents payments received from customers who make monthly payments to access the Company's GenKey solution. Revenue associated with fuel delivered to customers represents the sale of hydrogen to customers that has been purchased by the Company from a third party or generated on site.

In 2017, in separate transactions, the Company issued to each of Amazon and Walmart warrants to purchase shares of the Company's common stock. The Company recorded a portion of the estimated fair value of the warrants as a reduction of revenue based upon the projected number of shares of common stock expected to vest under the warrants, the proportion of purchases by Amazon, Walmart and their affiliates within the period relative to the aggregate purchase levels required for vesting of the respective warrants, and the then-current fair value of the warrants. During the fourth quarter of 2019, the Company adopted ASU 2019-08, with retrospective adoption as of January 1, 2019. As a result, the amount recorded as a reduction of revenue was measured based on the grant-date fair value of the warrants. Previously, this amount was measured based on vesting date fair value with estimates of fair value determined at each financial reporting date for unvested warrant shares considered to be probable of vesting. Except for the third tranche, all existing unvested warrants are using a measurement date of January 1, 2019, the adoption date, in accordance ASU 2019-08. For the third tranche, the exercise price will be determined once the second tranche vests. The fair value will be determined at that time.

The amount of provision for common stock warrants recorded as a reduction of revenue during the three months ended March 31, 2020 and 2019, respectively, is shown in the table below (in thousands):

	Three months ended March 31,	
	2020	2019
Sales of fuel cell systems and related infrastructure	\$ (644)	\$ (274)
Services performed on fuel cell systems and related infrastructure	(258)	(109)
Power Purchase Agreements	(551)	(388)
Fuel delivered to customers	(754)	(422)
Total	<u>\$ (2,207)</u>	<u>\$ (1,193)</u>

Revenue, cost of revenue, gross profit (loss) and gross margin for the three months ended March 31, 2020 and 2019, were as follows (in thousands):

	Net Revenue	Cost of Revenue	Gross Profit/(Loss)	Gross Margin
For the three months ended March 31, 2020:				
Sales of fuel cell systems and related infrastructure	\$ 20,387	\$ 13,744	\$ 6,643	32.6 %
Services performed on fuel cell systems and related infrastructure	6,521	8,181	(1,660)	(25.5)%
Power Purchase Agreements	6,496	14,243	(7,747)	(119.3)%
Fuel delivered to customers	7,333	9,035	(1,702)	(23.2)%
Other	76	81	(5)	(6.6)%
Total	<u>\$ 40,813</u>	<u>\$ 45,284</u>	<u>\$ (4,471)</u>	<u>(11.0)%</u>
For the three months ended March 31, 2019:				
Sales of fuel cell systems and related infrastructure	\$ 2,544	\$ 2,321	\$ 223	8.8 %
Services performed on fuel cell systems and related infrastructure	6,343	6,123	220	3.5 %
Power Purchase Agreements	6,110	8,998	(2,888)	(47.3)%
Fuel delivered to customers	6,582	7,921	(1,339)	(20.3)%
Other	—	—	—	— %
Total	<u>\$ 21,579</u>	<u>\$ 25,363</u>	<u>\$ (3,784)</u>	<u>(17.5)%</u>

Net Revenue

Revenue – sales of fuel cell systems and related infrastructure. Revenue from sales of fuel cell systems and related infrastructure represents revenue from the sale of our fuel cells, such as GenDrive units and GenSure stationary backup power units, as well as hydrogen fueling infrastructure referred to at the site level as hydrogen installations.

Revenue from sales of fuel cell systems and related infrastructure for the three months ended March 31, 2020 increased \$17.8 million, or 701.4%, to \$20.4 million from \$2.5 million for the three months ended March 31, 2019. Included within revenue was provision for common stock warrants of \$0.6 million and \$0.3 million for the three months ended March 31, 2020 and 2019, respectively. The main drivers for the increase in revenue were the increase in GenDrive units recognized as revenue, change in product mix, variations in customer programs, and an increase in hydrogen installations, offset partially by the increase in the provision for common stock warrants. There were 825 units recognized as revenue during the three months ended March 31, 2020, compared to 94 for the three months ended March 31, 2019. There was hydrogen infrastructure revenue associated with four hydrogen sites during the three months ended March 31, 2020, compared to zero during the three months ended March 31, 2019.

Revenue – services performed on fuel cell systems and related infrastructure. Revenue from services performed on fuel cell systems and related infrastructure represents revenue earned on our service and maintenance contracts and sales of spare parts. Revenue from services performed on fuel cell systems and related infrastructure for the three months ended March 31, 2020 increased \$0.2 million, or 2.8%, to \$6.5 million as compared to \$6.3 million for the three months ended March 31, 2019. Included within revenue was provision for common stock warrants of \$0.3 million and \$0.1 million

for the three months ended March 31, 2020 and 2019, respectively. The main driver for the increase in revenue was additional contractual revenue associated with higher utilization of units.

Revenue – Power Purchase Agreements. Revenue from PPAs represents payments received from customers for power generated through the provision of equipment and service. . Revenue from PPAs for the three months ended March 31, 2020 increased \$0.4 million, or 6.3%, to \$6.5 million from \$6.1 million for the three months ended March 31, 2019. Included within revenue was provision for common stock warrants of \$0.6 million and \$0.4 million for the three months ended March 31, 2020 and 2019, respectively. The increase in revenue from PPAs for the three months ended March 31, 2020 as compared to the three months ended March 31, 2019 was primarily attributable to the increase in units associated with the PPAs, offset in part by increased provision for common stock warrants.

Revenue – fuel delivered to customers. Revenue associated with fuel delivered to customers represents the sale of hydrogen to customers that has been purchased by the Company from a third party or generated on site. Revenue associated with fuel delivered to customers for the three months ended March 31, 2020 increased \$0.8 million, or 11.4%, to \$7.3 million from \$6.6 million for the three months ended March 31, 2019. Included within revenue was provision for common stock warrants of \$0.8 million and \$0.4 million for the three months ended March 31, 2020 and 2019, respectively. The increase in revenue was due to an increase in the number of sites with fuel contracts in 2020, compared to 2019, partially offset by the increase in the provision for common stock warrants.

Cost of Revenue

Cost of revenue – sales of fuel cell systems and related infrastructure. Cost of revenue from sales of fuel cell systems and related infrastructure includes direct materials, labor costs, and allocated overhead costs related to the manufacture of our fuel cells such as GenDrive units and GenSure stationary backup power units, as well as hydrogen fueling infrastructure referred to at the site level as hydrogen installations.

Cost of revenue from sales of fuel cell systems and related infrastructure for the three months ended March 31, 2020 increased 492.2%, or \$11.4 million, to \$13.7 million, compared to \$2.3 million for the three months ended March 31, 2019. This increase was driven by the increase in GenDrive deployment volume and increase in hydrogen installations. There were 825 units recognized as revenue during the three months ended March 31, 2020, compared to 94 for the three months ended March 31, 2019. Revenue associated with four hydrogen installations was recognized during the three months ended March 31, 2020, compared to zero during the three months ended March 31, 2019. Gross margin generated from sales of fuel cell systems and related infrastructure increased to 32.6% for the three months ended March 31, 2020, compared to 8.8% for the three months ended March 31, 2019, primarily due to favorable changes in product mix and customer profile mix. Additionally, the increase in margin was due to better operating leverage as a result of the aforementioned increase in revenue.

Cost of revenue – services performed on fuel cell systems and related infrastructure. Cost of revenue from services performed on fuel cell systems and related infrastructure includes the labor, material costs and allocated overhead costs incurred for our product service and hydrogen site maintenance contracts and spare parts. Cost of revenue from services performed on fuel cell systems and related infrastructure for the three months ended March 31, 2020 increased 33.6%, or \$2.1 million, to \$8.2 million, compared to \$6.1 million for the three months ended March 31, 2019. Gross margin declined to (25.5)% for the three months ended March 31, 2020, compared to 3.5% for the three months ended March 31, 2019 primarily due to program investments targeting performance improvements, as well as incremental service costs during the quarter associated with increased usage of units at some of our primary customer sites caused by the COVID-19 crisis.

Cost of revenue – Power Purchase Agreements. Cost of revenue from PPAs includes depreciation of assets utilized and service costs to fulfill PPA obligations and interest costs associated with certain financial institutions for leased equipment. Cost of revenue from PPAs for the three months ended March 31, 2020 increased \$5.2 million, or 58.3%, to \$14.2 million from \$9.0 million for the three months ended March 31, 2019. Gross margin declined to (119.3)% for the three months ended March 31, 2020, as compared to (47.3)% for the three months ended March 31, 2019 primarily due to program investments targeting performance improvements, as well as incremental service costs during the quarter associated with increased usage of units at some of our primary customer sites caused by the COVID-19 crisis.

Cost of revenue – fuel delivered to customers. Cost of revenue from fuel delivered to customers represents the purchase of hydrogen from suppliers that ultimately is sold to customers and costs for onsite generation. Cost of revenue from fuel delivered to customers for the three months ended March 31, 2020 increased \$1.1 million, or 14.1%, to \$9.0 million from \$7.9 million for the three months ended March 31, 2019. The increase was due primarily to higher volume of hydrogen delivered to customer sites as a result of an increase in the number of hydrogen installations completed under GenKey agreements and higher fuel costs. Gross margin declined to (23.2)% during the three months ended March 31, 2020, compared to (20.3)% during the three months ended March 31, 2019 primarily due to the increase in the amount of provision for common stock warrants. The provision for common stock warrants from fuel delivered to customers for the three months ended March 31, 2020 and 2019 had a 9.3% and 6.0% negative impact on revenue, respectively, and was partly offset by improved efficiencies on existing hydrogen sites.

Expenses

Research and development expense. Research and development expense includes: materials to build development and prototype units, cash and non-cash compensation and benefits for the engineering and related staff, expenses for contract engineers, fees paid to consultants for services provided, materials and supplies consumed, facility related costs such as computer and network services, and other general overhead costs associated with our research and development activities.

Research and development expense for the three months ended March 31, 2020 increased \$3.0 million, or 41.2%, to \$10.4 million, from \$7.4 million for the three months ended March 31, 2019. The increase was primarily due to additional R&D program investments such as programs associated with improvement of fuel efficiency, GenDrive unit performance and new product development such as on-road delivery trucks as well as drone applications.

Selling, general and administrative expenses. Selling, general and administrative expenses includes cash and non-cash compensation, benefits, amortization of intangible assets and related costs in support of our general corporate functions, including general management, finance and accounting, human resources, selling and marketing, information technology and legal services.

Selling, general and administrative expenses for the three months ended March 31, 2020, increased \$1.7 million, or 18.1%, to \$11.0 million from \$9.3 million for the three months ended March 31, 2019. This increase was primarily related to increases in salaries and stock-based compensation.

Interest and other expense, net. Interest and other expense, net consists of interest and other expenses related to our long-term debt, convertible senior notes, obligations under finance leases and our finance obligations, as well as foreign currency exchange losses, offset by interest and other income consisting primarily of interest earned on our cash and cash equivalents, restricted cash, foreign currency exchange gains and other income. Since March 31, 2019, the Company assumed approximately \$50.0 million of additional long-term debt at 12% interest, issued a \$40 million convertible senior note at 5.5% interest and entered into additional sale/leaseback finance obligation arrangements.

Net interest and other expense for the three months ended March 31, 2020 increased \$3.2 million, or 38.8%, as compared to the three months ended March 31, 2019. This increase was attributable to the increase in finance obligations, long-term debt and the issuance of the convertible senior note, as mentioned above.

Common Stock Warrant Liability

Change in fair value of common stock warrant liability. The Company accounts for common stock warrants as common stock warrant liability with changes in the fair value reflected in the unaudited interim condensed consolidated statement of operations as change in the fair value of common stock warrant liability. As of March 31, 2020, the Company no longer carries these types of warrants.

All remaining common stock warrants were fully exercised in the fourth quarter of 2019. As such there was no change in fair value as of March 31, 2020.

Income Tax

Income taxes. The Company did not record any income tax expense or benefit for the three months ended March 31, 2020 and 2019. The Company has not changed its overall conclusion with respect to the need for a valuation allowance against its net deferred tax assets, which remain fully reserved.

Liquidity and Capital Resources

Liquidity

Our cash requirements relate primarily to working capital needed to operate and grow our business, including funding operating expenses, growth in inventory to support both shipments of new units and servicing the installed base, growth in equipment leased to customers under long-term arrangements, funding the growth in our GenKey “turn-key” solution, which includes the installation of our customers’ hydrogen infrastructure as well as delivery of the hydrogen fuel, continued development and expansion of our products, payment of lease/financing obligations under sale/leaseback financings, and the repayment or refinancing of our long-term debt. Our ability to achieve profitability and meet future liquidity needs and capital requirements will depend upon numerous factors, including the timing and quantity of product orders and shipments; attaining and expanding positive gross margins across all product lines; the timing and amount of our operating expenses; the timing and costs of working capital needs; the timing and costs of developing marketing and distribution channels; the ability of our customers to obtain financing to support commercial transactions; our ability to obtain financing arrangements to support the sale or leasing of our products and services to customers and to repay or refinance our long-term debt, and the terms of such agreements that may require us to pledge or restrict substantial amounts of our cash to support these financing arrangements; the timing and costs of developing marketing and distribution channels; the timing and costs of product service requirements; the timing and costs of hiring and training product staff; the timing and costs of product development and introductions; the extent of our ongoing and new research and development programs; and changes in our strategy or our planned activities. If we are unable to fund our operations with positive cash flows and cannot obtain external financing, we may not be able to sustain future operations. As a result, we may be required to delay, reduce and/or cease our operations and/or seek bankruptcy protection.

We have experienced and continue to experience negative cash flows from operations and net losses. The Company incurred net losses attributable to common stockholders of \$37.5 million and \$31.0 million for the three months ended March 31, 2020, and 2019, respectively, and had an accumulated deficit of \$1.4 billion at March 31, 2020.

We have historically funded our operations primarily through public and private offerings of equity and debt, as well as short-term borrowings, long-term debt and project financings. The Company believes that its current working capital and cash anticipated to be generated from future operations, as well as borrowings from lending and project financing sources and proceeds from equity and debt offerings, including our at-the-market offering, will provide sufficient liquidity to fund operations for at least one year after the date the financial statements are issued. There is no guarantee that future funding will be available if and when required or at terms acceptable to the Company. This projection is based on our current expectations regarding new project financing and product sales and service, cost structure, cash burn rate and other operating assumptions.

During the three months ended March 31, 2020, net cash used in operating activities was \$60.0 million, consisting primarily of a net loss attributable to the Company of \$37.5 million, and net outflows from fluctuations in working capital and other assets and liabilities of \$33.9 million, offset by the impact of noncash charges of \$11.4 million. The changes in working capital primarily were related to decreases in accounts receivable and accounts payable, accrued expenses, and other liabilities offset by increases in deferred revenue, inventory, prepaid expenses and, other current assets. As of March 31, 2020, we had cash and cash equivalents of \$74.3 million and net working capital of \$125.4 million. By comparison, at December 31, 2019, we had cash and cash equivalents of \$139.5 million and net working capital of \$162.5 million.

Net cash used in investing activities for the three months ended March 31, 2020, totaled \$5.1 million and included purchases of property, plant and equipment and outflows associated with materials, labor, and overhead necessary to construct new leased property. Cash outflows related to equipment that we lease directly to customers are included in net cash used in investing activities. Net cash provided by financing activities for the three months ended March 31, 2020 totaled \$4.1 million and primarily resulted from proceeds from the exercise of stock options of \$6.1 million, increase in finance obligations of \$9.0 million, offset by repayments of long-term debt of \$5.3 million and finance obligations of \$5.7 million.

Public and Private Offerings of Equity and Debt

Common Stock Issuance

On April 13, 2020, the Company entered into an At Market Issuance Sales Agreement, or the Sales Agreement, with B. Riley FBR, Inc., as sales agent, or FBR, pursuant to which the Company may offer and sell, from time to time through FBR, shares of Company common stock having an aggregate offering price of up to \$75.0 million. As of the date of this filing, the Company did not issue any shares of common stock pursuant to the Sales Agreement.

In December 2019, the Company issued and sold in a registered public offering an aggregate of 46 million shares of its common stock at a purchase price of \$2.75 per share for net proceeds of approximately \$120.4 million.

In March 2019, the Company issued and sold in a registered direct offering an aggregate of 10 million shares of its common stock at a purchase price of \$2.35 per share for net proceeds of approximately \$23.5 million.

Preferred Stock Issuance

In November 2018, the Company completed a private placement of an aggregate of 35,000 shares of the Company's Series E Redeemable Convertible Preferred Stock, par value \$0.01 per share, or the Series E Preferred Stock, for net proceeds of approximately \$30.9 million. In the third quarter of 2019, the Company redeemed 4,038 shares of Series E Preferred Stock totaling \$4.0 million. In the fourth quarter of 2019, the Company converted 30,962 shares of Series E Preferred Stock into 13.8 million shares of its common stock. In January 2020, the Company converted the remainder of the 500 shares of Series E Preferred Stock into 216,000 shares of its common stock.

Convertible Senior Notes

In September 2019, the Company issued a \$40.0 million in aggregate principal amount of 7.5% convertible senior note due in 2023, which we refer to herein as the \$40 million Convertible Senior Note. The Company's total obligation, net of interest accretion, due to the holder is \$48.0 million. The total net proceeds from this offering, after deducting costs of the issuance were \$39.1 million. As of March 31, 2020, the outstanding balance of the note, net of related discount and issuance costs, was \$40.4 million. See "\$40 Million Convertible Senior Note" below for more details.

In March 2018, the Company issued \$100.0 million in aggregate principal amount of 5.5% convertible senior notes due in 2023, which we refer to herein as the \$100 million Convertible Senior Notes. The total net proceeds from this offering, after deducting costs of the issuance, were approximately \$95.9 million. Approximately \$43.5 million of the proceeds were used for the cost of the Capped Call and the Common Stock Forward (as defined below), both of which are hedges related to the \$100 million Convertible Senior Notes. As of March 31, 2020, the outstanding balance of the notes, net of related accretion and issuance costs, was \$72.6 million. See "\$100 Million Convertible Senior Notes" below, for more details.

Operating and Finance Leases

The Company enters into sale/leaseback agreements with various financial institutions to facilitate the Company's commercial transactions with key customers. The Company sells certain fuel cell systems and hydrogen infrastructure to the financial institutions and leases the equipment back to support certain customer locations and to fulfill its varied Power Purchase Agreements (PPAs). Transactions completed under the sale/leaseback transactions are generally accounted for

as operating leases and therefore the sales of the fuel cell systems and hydrogen infrastructure are recognized as revenue. In connection with certain sale/leaseback transactions, the financial institutions require the Company to maintain cash balances in restricted accounts securing the Company's finance obligations. Cash received from customers under the PPAs is used to make payments against the Company's finance obligations. As the Company performs under these agreements, the required restricted cash balances are released, according to a set schedule. The total remaining lease payments to financial institutions under these agreements at March 31, 2020 was \$268.1 million, \$234.6 million of which were secured with restricted cash, security deposits backing letters of credit, and pledged service escrows.

The Company has varied master lease agreements with Wells Fargo Equipment Finance, Inc., or Wells Fargo, to finance the Company's commercial transactions with various customers. The Wells Fargo lease agreements were entered into during 2017, 2018, and 2019. No sale/leaseback transactions were entered with Wells Fargo during the three months ended March 31, 2020. Pursuant to the lease agreements, the Company sells fuel cell systems and hydrogen infrastructure to Wells Fargo and then leases them back and operates them at Walmart sites. The Company has a customer guarantee for a large portion of the transactions entered into in connection with such lease agreements. The Wells Fargo lease agreements required letters of credit for the unguaranteed portion totaling \$55.5 million as of March 31, 2020. The total remaining lease liabilities owed to Wells Fargo were \$108.0 million at March 31, 2020.

Over recent years, including in 2019, the Company has entered into master lease agreements with multiple institutions such as Key Equipment Finance (KeyBank), SunTrust Equipment Finance & Lease Corp. (now known as Truist), and First American Bancorp, Inc. (First American). In the first quarter of 2020, the Company entered into additional lease agreements with KeyBank and First American. Similar to the Wells Fargo lease agreements, the primary purpose of these agreements is to finance commercial transactions with varied customers. Most of the transactions with these financial institutions required cash collateral for the unguaranteed portions totaling \$179.1 million as of March 31, 2020. Similar to the Wells Fargo lease agreements, in many cases the Company has a customer guarantee for a large portion of the transactions. The total remaining lease liabilities owed to these financial institutions were \$160.1 million at March 31, 2020.

Restricted Cash

As security for the above sale/leaseback agreements, as of March 31, 2020, \$129.7 million of our cash is required to be restricted and will be released over the lease terms. In addition, as of March 31, 2020, the Company had cash security deposits totaling \$101.6 million backing letters of credit that secure the sale/leaseback agreements

Secured Debt

In March 2019, the Company, and its subsidiaries Emerging Power Inc. and Emergent Power Inc., entered into a loan and security agreement, as amended (the Loan Agreement), with Generate Lending, LLC (Generate Capital), providing for a secured term loan facility in the amount of \$100.0 million (the Term Loan Facility). The Company borrowed \$85.0 million under the Loan Agreement on the date of closing and borrowed an additional \$15.0 million in April 2019. A portion of the initial proceeds of the loan was used to pay in full the Company's long-term debt with NY Green Bank, a Division of the New York State Energy Research & Development Authority, including accrued interest of \$17.6 million (the Green Bank Loan), and terminate approximately \$50.3 million of certain equipment leases with Generate Plug Power SLB II, LLC and repurchase the associated leased equipment. In connection with this transaction, the Company recognized a loss on extinguishment of debt of approximately \$0.5 million during the three months ended March 31, 2019. This loss was recorded in interest and other expenses, net in the Company's unaudited interim condensed consolidated statement of operations. Additionally, \$1.7 million was paid to an escrow account related to additional fees due in connection with the Green Bank Loan if the Company does not meet certain New York State employment and fuel cell deployment targets by March 2021. Amount escrowed is recorded in long-term other assets on the Company's unaudited interim condensed consolidated balance sheets as of March 31, 2020. The Company presently expects to meet the targets as required under the arrangement. Additionally, in November 2019, the Company borrowed an incremental \$20.0 million at 12% interest to fund working capital for ongoing deployments and other general corporate purposes. On March 31, 2020, the outstanding balance under the Term Loan Facility was \$107.5 million with a 12% interest rate.

On May 6, 2020, the Company and Generate amended the Loan Agreement to, among other things, (i) provide an incremental term loan facility in the amount of \$50.0 million, which has been fully funded, (ii) provide for additional, incremental term loans in an aggregate amount not to exceed \$50.0 million, which are available to the Company in Generate Capital's sole discretion, (iii) reduce the interest rate on all loans to 9.50% from 12.00% per annum, and (iv) extend the maturity date to October 31, 2025 from October 6, 2022.

The Loan Agreement includes covenants, limitations, and events of default customary for similar facilities. Interest and a portion of the principal amount is payable on a quarterly basis. Principal payments will be funded in part by releases of restricted cash, as described in Note 15, Commitments and Contingencies. Based on the current amortization schedule, the outstanding balance of \$157.5 million under the Term Loan Facility will be fully paid by March 31, 2024. If addition term loans are funded, the entire then-outstanding principal balance of the Term Loan Facility, together with all accrued and unpaid interest, will be due and payable on the maturity date of October 31, 2025.

All obligations under the Loan Agreement are unconditionally guaranteed by Emerging Power Inc. and Emergent Power Inc. The Term Loan Facility is secured by substantially all of the Company's and the guarantor subsidiaries' assets, including, among other assets, all intellectual property, all securities in domestic subsidiaries and 65% of the securities in foreign subsidiaries, subject to certain exceptions and exclusions.

The Loan Agreement contains covenants, including, among others, (i) the provision of annual and quarterly financial statements, management rights and insurance policies and (ii) restrictions on incurring debt, granting liens, making acquisitions, making loans, paying dividends, dissolving, and entering into leases and asset sales and (iii) compliance with a collateral coverage covenant. The Loan Agreement also provides for events of default, including, among others, payment, bankruptcy, covenant, representation and warranty, change of control, judgment and material adverse effect defaults at the discretion of the lender. As of March 31, 2020, the Company was in compliance with all the covenants.

The Loan Agreement provides that if there is an event of default due to the Company's insolvency or if the Company fails to perform in any material respect the servicing requirements for fuel cell systems under certain customer agreements, which failure would entitle the customer to terminate such customer agreement, replace the Company or withhold the payment of any material amount to the Company under such customer agreement, then Generate Capital has the right to cause Proton Services Inc., a wholly owned subsidiary of the Company, to replace the Company in performing the maintenance services under such customer agreement.

As of March 31, 2020, the Term Loan Facility requires the principal balance at the end of each of the following years amortization may not exceed the following (in thousands):

December 31, 2020	\$ 86,159
December 31, 2021	59,373

As of May 6, 2020, the Term Loan Facility, including the incremental borrowing subsequent to March 31, 2020, as described above, requires the principal balance at the end of each of the following years amortization may not exceed the following (in thousands):

December 31, 2020	\$ 125,687
December 31, 2021	89,301
December 31, 2022	51,478
December 31, 2023	16,863

We have historically funded our operations primarily through public and private offerings of equity and debt, as well as short-term borrowings, long-term debt and project financings. The Company believes that its current working capital and cash anticipated to be generated from future operations, as well as borrowings from lending and project financing sources and proceeds from equity and debt offerings, including the at-the-market offering, will provide sufficient liquidity to fund operations for at least one year after the date the financial statements are issued. There is no guarantee that future funding will be available if and when required or at terms acceptable to the Company. This projection is based

on our current expectations regarding new project financing and product sales and service, cost structure, cash burn rate and other operating assumptions.

Several key indicators of liquidity are summarized in the following table (in thousands):

	Three months ended or at March 31, 2020	Year ended or at December 31, 2019
Cash and cash equivalents at end of period	\$ 74,340	\$ 139,496
Restricted cash at end of period	232,874	230,004
Working capital at end of period	125,431	162,549
Net loss attributable to common stockholders	37,492	85,517
Net cash used in operating activities	(60,015)	(51,522)
Net cash used in investing activities	(6,355)	(14,244)
Net cash provided by financing activities	4,083	325,060

\$40 Million Convertible Senior Note

In September 2019, the Company issued a \$40.0 million aggregate principal amount of 7.5% Convertible Senior Note due on January 5, 2023 in exchange for net proceeds of \$39.1 million, in a private placement to an accredited investor pursuant to Rule 144A under the Securities Act of 1933, as amended, or the Securities Act. There are no required principal payments prior to maturity of the note. Upon maturity of the note, the Company is required to repay 120% of \$40.0 million, or \$48.0 million. The note bears interest at 7.5% per annum, payable quarterly in arrears on January 5, April 5, July 5 and October 5 of each year beginning on October 5, 2019 and will mature on January 5, 2023 unless earlier converted or repurchased in accordance with its terms. The note is unsecured and does not contain any financial covenants or any restrictions on the payment of dividends, or the issuance or repurchase of common stock by the Company.

The note has an initial conversion rate of 387.5969, which is subject to adjustment in certain events. The initial conversion rate is equivalent to an initial conversion price of approximately \$2.58 per share of common stock. The holder of the note may convert at its option at any time until the close of business on the second scheduled trading day immediately prior to the maturity date for shares of the Company's common stock, subject to certain limitations. In addition, the note will be automatically converted if (1) the daily volume-weighted average price per share of common stock exceeds 175% of the conversion price (as described above) on each of the 20 consecutive VWAP trading days (as defined in the note) beginning after the issue date of the note and (2) certain equity conditions (as defined in the note) are satisfied. Only if both criteria are met is the note automatically converted. Upon either the voluntary or automatic conversion of the note, the Company will deliver shares of common stock based on (1) the then-effective conversion rate and (2) the original principal amount of \$40.0 million and not the maturity principal amount of \$48.0 million. The note does not allow cash settlement (entirely or partially) upon conversion. As such, the Company uses the if-converted method for calculating any potential dilutive effect of the conversion option on diluted earnings per share.

The Company concluded the conversion features did not require bifurcation. Specifically, while the Company determined that (i) the conversion features were not clearly and closely related to the host contracts, (ii) the note (i.e., hybrid instrument) is not remeasured at fair value under otherwise applicable GAAP with changes in fair value reported in earnings as they occur and (iii) the conversion features, if freestanding, would meet the definition of a derivative, the Company concluded such conversion features meet the equity scope exception, and therefore, the conversion features are not required to be bifurcated from the note.

If the Company undergoes a fundamental change prior to the maturity date, subject to certain limitations, the holder may require the Company to repurchase for cash all or a portion of the note at a cash repurchase price equal to any accrued and unpaid interest on the note (or portion thereof), plus the greater of (1) 115% of the maturity principal amount of \$48.0 million (or portion thereof) and (2) 110% of the product of (i) the conversion rate in effect as of the trading day immediately preceding the date of such fundamental change; (ii) the principal amount of the \$40.0 million note to be repurchased divided by \$1,000; and (iii) the average of the daily volume-weighted average price per share of the Company's common stock over the five consecutive VWAP trading days immediately before the effective date of such fundamental change.

In addition, with the consent of the holder of the note, subject to certain limitations, the Company may redeem all or any portion of the note, at the Company's option, at a cash redemption price equal to any accrued and unpaid interest on the note (or portion thereof), plus the greater of (1) 105% of the maturity principal amount of \$48.0 million (or portion thereof); and (2) 115% of the product of (i) the conversion rate in effect as of the trading day immediately preceding the related redemption date; (ii) the principal amount of the \$40.0 million note to be redeemed divided by \$1,000; and (iii) the arithmetic average of the daily volume-weighted average price per share of common stock over the five consecutive VWAP trading days immediately before the related redemption date.

While the Company concluded the fundamental change redemption option represents an embedded derivative, the Company concluded the value of the embedded derivative to be immaterial given the likelihood of the occurrence of a fundamental change was deemed to be remote. As related to the call option, the Company concluded the call option was clearly and closely related to the host contract, and therefore, did not meet the definition of an embedded derivative.

The Company concluded the total debt discount at issuance of the note equaled approximately \$8.0 million. This debt discount was attributed to the fact that upon maturity, the Company is required to repay 120% of \$40.0 million, or \$48.0 million. The related debt issuance costs were \$1.0 million. The debt discount was recorded as debt issuance cost (presented as contra debt in the unaudited interim condensed consolidated balance sheets) and is being amortized to interest expense over the term of the note using the effective interest rate method.

The note consisted of the following (in thousands):

	March 31, 2020	December 31, 2019
Principal amounts:		
Principal at maturity	\$ 48,000	\$ 48,000
Unamortized debt discount	(6,800)	(7,400)
Unamortized debt issuance costs	(891)	(969)
Net carrying amount	\$ 40,309	\$ 39,631

Based on the closing price of the Company's common stock of \$3.54 on March 31, 2020, the if-converted value of the notes was greater than the principal amount. The estimated fair value of the note at March 31, 2020 and December 31, 2019 was approximately \$57.3 million and \$53.5 million, respectively. The Company utilized a Monte Carlo simulation model to estimate the fair value of the convertible debt. The simulation model is designed to capture the potential settlement features of the convertible debt, in conjunction with simulated changes in the Company's stock price over the term of the note, incorporating a volatility assumption of 70%. This is considered a Level 3 fair value measurement.

\$100 Million Convertible Senior Notes

In March 2018, the Company issued \$100.0 million in aggregate principal amount of 5.5% Convertible Senior Notes due on March 15, 2023 in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act. There are no required principal payments prior to maturity of the notes.

The total net proceeds from the notes were as follows:

	Amount (in thousands)
Principal amount	\$ 100,000
Less initial purchasers' discount	(3,250)
Less cost of related capped call and common stock forward	(43,500)
Less other issuance costs	(894)
Net proceeds	\$ 52,356

The notes bear interest at 5.5%, payable semi-annually in cash on March 15 and September 15 of each year. The notes will mature on March 15, 2023, unless earlier converted or repurchased in accordance with their terms. The notes are unsecured and do not contain any financial covenants or any restrictions on the payment of dividends, or the issuance or repurchase of common stock by the Company.

Each \$1,000 principal amount of the notes is convertible into 436.3002 shares of the Company's common stock, which is equivalent to a conversion price of approximately \$2.29 per share, subject to adjustment upon the occurrence of specified events. Holders of these notes may convert their notes at their option at any time prior to the close of the last business day immediately preceding September 15, 2022, only under the following circumstances:

- 1) during any calendar quarter (and only during such calendar quarter), if the last reported sale price of the Company's common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day;
- 2) during the five business day period after any five consecutive trading day period (the measurement period) in which the trading price (as defined in the indenture governing the notes) per \$1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate for the notes on each such trading day;
- 3) if the Company calls any or all of the notes for redemption, at any time prior to the close of business on the second scheduled trading day immediately preceding the redemption date; or
- 4) upon the occurrence of certain specified corporate events, such as a beneficial owner acquiring more than 50% of the total voting power of the Company's common stock, recapitalization of the Company, dissolution or liquidation of the Company, or the Company's common stock ceases to be listed on an active market exchange.

On or after September 15, 2022, holders may convert all or any portion of their notes at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date regardless of the foregoing conditions.

Upon conversion of the notes, the Company will pay or deliver, as the case may be, cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock, at the Company's election. While the Company plans to settle the principal amount of the notes in cash subject to available funding at time of settlement, we currently use the if-converted method for calculating any potential dilutive effect of the conversion option on diluted net income per share, subject to meeting the criteria for using the treasury stock method in future periods.

The conversion rate will be subject to adjustment in some events but will not be adjusted for any accrued or unpaid interest. Holders who convert their notes in connection with certain corporate events that constitute a "make-whole fundamental change" per the indenture governing the notes or in connection with a redemption will be, under certain circumstances, entitled to an increase in the conversion rate. In addition, if the Company undergoes a fundamental change prior to the maturity date, holders may require the Company to repurchase for cash all or a portion of its notes at a repurchase price equal to 100% of the principal amount of the repurchased notes, plus accrued and unpaid interest.

The Company may not redeem the notes prior to March 20, 2021. The Company may redeem for cash all or any portion of the notes, at the Company's option, on or after March 20, 2021 if the last reported sale price of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive), including at least one of the three trading days immediately preceding the date on which the Company provides notice of redemption, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company provides notice of redemption at a redemption price equal to 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date.

In accounting for the issuance of the notes, the Company separated the notes into liability and equity components. The initial carrying amount of the liability component of approximately \$58.2 million, net of costs incurred, was calculated

by measuring the fair value of a similar liability that does not have an associated convertible feature. The carrying amount of the equity component of approximately \$37.7 million, net of costs incurred, representing the conversion option, was determined by deducting the fair value of the liability component from the par value of the notes. The difference between the principal amount of the notes and the liability component (the debt discount) is amortized to interest expense using the effective interest method over the term of the notes. The effective interest rate is approximately 16.0%. The equity component of the notes is included in additional paid-in capital in the unaudited interim condensed consolidated balance sheets and is not remeasured as long as it continues to meet the conditions for equity classification.

We incurred transaction costs related to the issuance of the notes of approximately \$4.1 million, consisting of initial purchasers' discount of approximately \$3.3 million and other issuance costs of \$0.9 million. In accounting for the transaction costs, we allocated the total amount incurred to the liability and equity components using the same proportions as the proceeds from the notes. Transaction costs attributable to the liability component were approximately \$2.4 million, were recorded as debt issuance cost (presented as contra debt in the unaudited interim condensed consolidated balance sheets) and are being amortized to interest expense over the term of the notes. The transaction costs attributable to the equity component were approximately \$1.7 million and were netted with the equity component in stockholders' equity.

The notes consisted of the following (in thousands):

	March 31, 2020	December 31, 2019
Principal amounts:		
Principal	\$ 100,000	\$ 100,000
Unamortized debt discount (1)	(25,985)	(27,818)
Unamortized debt issuance costs (1)	(1,446)	(1,567)
Net carrying amount	\$ 72,569	\$ 70,615
Carrying amount of the equity component (2)	\$ 37,702	\$ 37,702

- 1) Included in the unaudited interim condensed consolidated balance sheets within the \$100.0 million Convertible Senior Notes, net and amortized over the remaining life of the notes using the effective interest rate method.
- 2) Included in the unaudited interim condensed consolidated balance sheets within additional paid-in capital, net of \$1.7 million in equity issuance costs and associated income tax benefit of \$9.2 million.

Based on the closing price of the Company's common stock of \$3.54 on March 31, 2020, the if-converted value of the notes was greater than the principal amount. The estimated fair value of the notes at March 31, 2020 and December 31, 2019 was approximately \$147.4 million and \$135.3 million, respectively. The Company utilized a Monte Carlo simulation model to estimate the fair value of the convertible debt. The simulation model is designed to capture the potential settlement features of the convertible debt, in conjunction with simulated changes in the Company's stock price over the term of the notes, incorporating a volatility assumption of 70%. This is considered a Level 3 fair value measurement.

Capped Call

In conjunction with the issuance of the \$100 million Convertible Senior Notes, the Company entered into capped call options (Capped Call), on the Company's common stock with certain counterparties at a price of \$16.0 million. The net cost incurred in connection with the Capped Call has been recorded as a reduction to additional paid-in capital in the unaudited interim condensed consolidated balance sheets.

The Capped Call is generally expected to reduce or offset the potential dilution to the Company's common stock upon any conversion of the \$100 million Convertible Senior Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of the converted notes, as the case may be, with such reduction and/or offset subject to a cap based on the cap price. The cap price of the Capped Call transactions is initially \$3.82 per share, which represents a premium of 100% over the last then-reported sale price of the Company's common stock of \$1.91 per

share on the date of the transaction and is subject to certain adjustments under the terms of the Capped Call. The Capped Call becomes exercisable if the conversion option is exercised.

By entering into the Capped Call, the Company expects to reduce the potential dilution to its common stock (or, in the event the conversion is settled in cash, to provide a source of cash to settle a portion of its cash payment obligation) in the event that at the time of conversion its stock price exceeds the conversion price under the \$100 million Convertible Senior Notes.

Common Stock Forward

In connection with the sale of the \$100 million Convertible Senior Notes, the Company also entered into a forward stock purchase transaction, or the Common Stock Forward, pursuant to which the Company agreed to purchase 14,397,906 shares of its common stock for settlement on or about March 15, 2023. The number of shares of common stock that the Company will ultimately repurchase under the Common Stock Forward is subject to customary anti-dilution adjustments. The Common Stock Forward is subject to early settlement or settlement with alternative consideration in the event of certain corporate transactions.

The net cost incurred in connection with the Common Stock Forward of \$27.5 million has been recorded as an increase in treasury stock in the unaudited interim condensed consolidated balance sheets. The related shares were accounted for as a repurchase of common stock.

The fair values of the Capped Call and Common Stock Forward are not remeasured.

Amazon Transaction Agreement

On April 4, 2017, the Company and Amazon entered into a Transaction Agreement (the Amazon Transaction Agreement), pursuant to which the Company agreed to issue to Amazon.com NV Investment Holdings LLC, a wholly owned subsidiary of Amazon, warrants to acquire up to 55,286,696 shares of the Company's common stock (the Amazon Warrant Shares), subject to certain vesting events described below. The Company and Amazon entered into the Amazon Transaction Agreement in connection with existing commercial agreements between the Company and Amazon with respect to the deployment of the Company's GenKey fuel cell technology at Amazon distribution centers. The existing commercial agreements contemplate, but do not guarantee, future purchase orders for the Company's fuel cell technology. The vesting of the Amazon Warrant Shares is linked to payments made by Amazon or its affiliates (directly or indirectly through third parties) pursuant to the existing commercial agreements.

The majority of the Amazon Warrant Shares will vest based on Amazon's payment of up to \$600.0 million to the Company in connection with Amazon's purchase of goods and services from the Company. The first tranche of 5,819,652 Amazon Warrant Shares vested upon the execution of the Amazon Transaction Agreement. Accordingly, \$6.7 million, the fair value of the first tranche of Amazon Warrant Shares, was recognized as selling, general and administrative expense during 2017. All future provision for common stock warrants is measured based on their grant-date fair value and recorded as a charge against revenue. The second tranche of 29,098,260 Amazon Warrant Shares will vest in four installments of 7,274,565 Amazon Warrant Shares each time Amazon or its affiliates, directly or indirectly through third parties, make an aggregate of \$50.0 million in payments for goods and services to the Company, up to payments totaling \$200.0 million in the aggregate. The exercise price for the first and second tranches of Amazon Warrant Shares is \$1.1893 per share. After Amazon has made payments to the Company totaling \$200.0 million, the third tranche of 20,368,784 Amazon Warrant Shares will vest in eight installments of 2,546,098 Amazon Warrant Shares each time Amazon or its affiliates, directly or indirectly through third parties, make an aggregate of \$50.0 million in payments for goods and services to the Company, up to payments totaling \$400.0 million in the aggregate. The exercise price of the third tranche of Amazon Warrant Shares will be an amount per share equal to ninety percent (90%) of the 30-day volume weighted average share price of the common stock as of the final vesting date of the second tranche of Amazon Warrant Shares. The Amazon Warrant Shares are exercisable through April 4, 2027. The Amazon Warrant Shares provide for net share settlement that, if elected by the holders, will reduce the number of shares issued upon exercise to reflect net settlement of the exercise price. The Amazon Warrant Shares provide for certain adjustments that may be made to the exercise price and the number of shares of common

stock issuable upon exercise due to customary anti-dilution provisions based on future events. These warrants are classified as equity instruments.

At March 31, 2020 and December 31, 2019, 20,368,782 of the Amazon Warrant Shares had vested. The amount of provision for common stock warrants recorded as a reduction of revenue for the Amazon Warrant during the three months ended March 31, 2020 and 2019 was \$1.3 million and \$0.5 million, respectively.

Walmart Transaction Agreement

On July 20, 2017, the Company and Walmart entered into a Transaction Agreement (the Walmart Transaction Agreement), pursuant to which the Company agreed to issue to Walmart a warrant to acquire up to 55,286,696 shares of the Company's common stock, subject to certain vesting events (the Walmart Warrant Shares). The Company and Walmart entered into the Walmart Transaction Agreement in connection with existing commercial agreements between the Company and Walmart with respect to the deployment of the Company's GenKey fuel cell technology across various Walmart distribution centers. The existing commercial agreements contemplate, but do not guarantee, future purchase orders for the Company's fuel cell technology. The vesting of the warrant shares is linked to payments made by Walmart or its affiliates (directly or indirectly through third parties) pursuant to transactions entered into after January 1, 2017 under existing commercial agreements.

The majority of the Walmart Warrant Shares will vest based on Walmart's payment of up to \$600.0 million to the Company in connection with Walmart's purchase of goods and services from the Company. The first tranche of 5,819,652 Walmart Warrant Shares vested upon the execution of the Walmart Transaction Agreement. Accordingly, \$10.9 million, the fair value of the first tranche of Walmart Warrant Shares, was recorded as a provision for common stock warrants and presented as a reduction to revenue on the unaudited interim condensed consolidated statements of operations during 2017. All future provision for common stock warrants is measured based on their grant-date fair value and recorded as a charge against revenue. The second tranche of 29,098,260 Walmart Warrant Shares will vest in four installments of 7,274,565 Walmart Warrant Shares each time Walmart or its affiliates, directly or indirectly through third parties, make an aggregate of \$50.0 million in payments for goods and services to the Company, up to payments totaling \$200.0 million in the aggregate. The exercise price for the first and second tranches of Walmart Warrant Shares is \$2.1231 per share. After Walmart has made payments to the Company totaling \$200.0 million, the third tranche of 20,368,784 Walmart Warrant Shares will vest in eight installments of 2,546,098 Walmart Warrant Shares each time Walmart or its affiliates, directly or indirectly through third parties, make an aggregate of \$50.0 million in payments for goods and services to the Company, up to payments totaling \$400.0 million in the aggregate. The exercise price of the third tranche of Walmart Warrant Shares will be an amount per share equal to ninety percent (90%) of the 30-day volume weighted average share price of the common stock as of the final vesting date of the second tranche of Walmart Warrant Shares, provided that, with limited exceptions, the exercise price for the third tranche will be no lower than \$1.1893. The Walmart Warrant Shares are exercisable through July 20, 2027.

The Walmart Warrant Shares provide for net share settlement that, if elected by the holders, will reduce the number of shares issued upon exercise to reflect net settlement of the exercise price. The Walmart Warrant Shares provide for certain adjustments that may be made to the exercise price and the number of shares of common stock issuable upon exercise due to customary anti-dilution provisions based on future events. These warrants are classified as equity instruments.

At March 31, 2020 and December 31, 2019, 5,819,652 of the Walmart Warrant Shares had vested. The amount of provision for common stock warrants recorded as a reduction of revenue for the Walmart Warrant during the three months ended March 31, 2020 and 2019 was \$0.9 million and \$0.7 million, respectively.

Lessor Obligations

As of March 31, 2020, the Company had noncancelable operating leases (as lessor), primarily associated with assets deployed at customer sites. These leases expire over the next one to seven years. Leases contain termination clauses with associated penalties, the amount of which cause the likelihood of cancellation to be remote.

Future minimum lease payments under noncancelable operating leases (with initial or remaining lease terms in excess of one year) as of March 31, 2020 were as follows (in thousands):

Remainder of 2020	\$ 27,806
2021	30,993
2022	23,632
2023	19,952
2024	16,508
2025 and thereafter	\$ 27,643
Total future minimum lease payments	<u>\$ 146,534</u>

Lessee Obligations

As of March 31, 2020, the Company had operating and finance leases, as lessee, primarily associated with sale/leaseback transactions that are partially secured by restricted cash, security deposits and pledged escrows (see also Note 1, Nature of Operations) as summarized below. These leases expire over the next one to nine years. Minimum rent payments under operating and finance leases are recognized on a straight-line basis over the term of the lease. Leases contain termination clauses with associated penalties, the amount of which cause the likelihood of cancellation to be remote.

In prior periods, the Company entered into sale/leaseback transactions that were accounted for as finance leases and reported as part of finance obligations. The outstanding balance of finance obligations related to sale/leaseback transactions at March 31, 2020 and December 31, 2019 was \$29.8 million and \$31.7 million, respectively. The fair value of the finance obligation approximated the carrying value as of both March 31, 2020 and December 31, 2019.

The Company has sold future services to be performed associated with certain sale/leaseback transactions and recorded the balance as a finance obligation. The outstanding balance of this obligation at March 31, 2020 was \$114.6 million, \$17.0 million and \$97.6 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheets. The outstanding balance of this obligation at December 31, 2019 was \$35.6 million, \$6.0 million and \$29.6 million of which was classified as short-term and long-term, respectively. The amount is amortized using the effective interest method. The fair value of this finance obligation approximated the carrying value as of March 31, 2020.

The Company has a finance lease associated with its property and equipment in Latham, New York. Liabilities relating to this lease of \$2.2 million has been recorded as a finance obligation in the unaudited interim condensed consolidated balance sheets as of March 31, 2020 and December 31, 2019. The fair value of this finance obligation approximated the carrying value as of March 31, 2020.

Future minimum lease payments under operating and finance leases (with initial or remaining lease terms in excess of one year) as of March 31, 2020 were as follows (in thousands):

	Operating Leases	Finance Leases	Other Leased Property	Total Finance Obligations
Remainder of 2020	\$ 34,998	\$ 7,596	\$ 285	\$ 42,879
2021	46,669	9,276	407	56,352
2022	44,139	4,975	390	49,504
2023	39,074	3,149	366	42,589
2024	39,079	16,154	373	55,606
2025 and thereafter	40,250	—	1,174	41,424
Total future minimum lease payments	244,209	41,150	2,995	288,354
Less imputed lease interest	(66,624)	(11,299)	(838)	(78,761)
Sale of future services	114,625	—	—	114,625
Total lease liabilities	<u>\$ 292,210</u>	<u>\$ 29,851</u>	<u>\$ 2,157</u>	<u>\$ 324,218</u>

Rental expense for all operating leases was \$12.6 million and \$6.0 million for the three months ended March 31, 2020 and 2019, respectively.

The gross profit on sale/leaseback transactions for all operating leases was \$5.3 million and zero for the three months ended March 31, 2020 and 2019, respectively. Right of use assets obtained in exchange for new operating lease liabilities was \$16.2 million and zero for the three months ended March 31, 2020 and 2019, respectively.

At both March 31, 2020 and December 31, 2019, security deposits associated with sale/leaseback transactions were \$6.0 million, and were included in other assets in the unaudited interim condensed consolidated balance sheets.

Other information related to the operating leases are presented in the following tables:

	Three months ended March 31, 2020	Three months ended March 31, 2019
Cash payments (in thousands)	\$ 12,522	\$ 5,728

	As of March 31, 2020	2019
Weighted average remaining lease term (years)	5.52	4.92
Weighted average discount rate	12.1%	12.1%

Finance lease costs include amortization of the right of use assets (i.e., depreciation expense) and interest on lease liabilities (i.e., interest and other expense, net in the unaudited interim consolidated statement of operations). Finance lease costs were as follows (in thousands):

	Three months ended March 31, 2020	Three months ended March 31, 2019
Amortization of right of use asset	\$ 870	\$ 808
Interest on finance obligations	638	2,091
Total finance lease cost	\$ 1,508	\$ 2,899

Right of use assets obtained in exchange for new finance lease liabilities was zero for both the three months ended March 31, 2020 and 2019.

Other information related to the finance leases are presented in the following tables:

	Three months ended March 31, 2020	Three months ended March 31, 2019
Cash payments (in thousands)	\$ 2,610	\$ 54,170

	As of March 31, 2020	2019
Weighted average remaining lease term (years)	3.68	3.53
Weighted average discount rate	8.1%	10.8%

Restricted Cash

In connection with certain of the above noted sale/leaseback agreements, cash of \$129.7 million was required to be restricted as security as of March 31, 2020, which restricted cash will be released over the lease term. As of March 31, 2020, the Company also had certain letters of credit backed by security deposits totaling \$101.6 million that are security for the above noted sale/leaseback agreements.

The Company also had letters of credit in the aggregate amount of \$0.5 million at March 31, 2020 associated with a finance obligation from the sale/leaseback of its building. We consider cash collateralizing this letter of credit as restricted cash.

Off-Balance Sheet Arrangements

As of March 31, 2020, the Company does not have off-balance sheet arrangements that are likely to have a current or future significant effect on the Company's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

Critical Accounting Estimates

Management's discussion and analysis of our financial condition and results of operations are based upon our unaudited interim condensed consolidated financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these unaudited interim condensed consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities at the date of and during the reporting period. On an on-going basis, we evaluate our estimates and judgments, including those related to revenue recognition for multiple element arrangements, bad debts, inventories, intangible assets, valuation of long-lived assets, accrual for loss contracts on service, operating and finance leases, product warranty reserves, unbilled revenue, common stock warrants, income taxes, stock-based compensation, contingencies, and purchase accounting. We base our estimates and judgments on historical experience and on various other factors and assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about (1) the carrying values of assets and liabilities and (2) the amount of revenue and expenses realized that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We refer to the policies and estimates set forth in the section "Management's Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Estimates", as well as a discussion of significant accounting policies included in Note 2, Summary of Significant Accounting Policies, of the consolidated financial statements, both of which are included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019.

Recently Adopted Accounting Pronouncements

In June 2016, *Accounting Standards Update (ASU) 2016-13, Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, was issued. Also, In April 2019, *Accounting Standards Update (ASU) 2019-04, Codification Improvements to Topic 326, Financial Instruments—Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments*, was issued to make improvements to updates 2016-01, *Financial Instruments – Overall* (Subtopic 825-10), 2016-13, *Financial Instruments – Credit Losses* (Topic 326) and 2017-12, *Derivatives and Hedging* (Topic 815). ASU 2016-13 significantly changes how entities account for credit losses for financial assets and certain other instruments, including trade receivables and contract assets, that are not measured at fair value through net income. The ASU requires a number of changes to the assessment of credit losses, including the utilization of an expected credit loss model, which requires consideration of a broader range of information to estimate expected credit losses over the entire lifetime of the asset, including losses where probability is considered remote. Additionally, the standard requires the estimation of lifetime expected losses for trade receivables and contract assets that are classified as current. The Company adopted these standards effective January 1, 2020 and determined the impact of the standards to be immaterial to the consolidated financial statements.

In April 2019, *Accounting Standards Update (ASU) 2019-04, Codification Improvements to Topic 326, Financial Instruments—Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments*, was issued to make improvements to updates 2016-01, *Financial Instruments – Overall* (Subtopic 825-10), 2016-13, *Financial Instruments – Credit Losses* (Topic 326) and 2017-12, *Derivatives and Hedging* (Topic 815). The Company adopted this standard effective January 1, 2020 and determined the impact of this standard to be immaterial to the consolidated financial statements.

In January 2017, *Accounting Standards Update (ASU) 2017-04, Intangibles – Goodwill and Other (Topic 350)*, was issued to simplify how an entity is required to test goodwill for impairment by eliminating Step 2 from the goodwill impairment test. Step 2 measures a goodwill impairment loss by comparing the implied fair value of a reporting unit's goodwill with the carrying amount of that goodwill. The Company adopted this standard effective January 1, 2020.

In August 2016, *Accounting Standards Update (ASU) 2016-15, Statement of Cash Flows (Topic 230)s: Classification of Certain Cash Receipts and Cash Payments*, was issued to reduce the existing diversity in practice in how certain cash receipts and cash payments are presented and classified in the statement of cash flows. The Company adopted this standard in 2019 and determined the impact of this standard to be immaterial to the consolidated financial statements.

Recently Issued and Not Yet Adopted Accounting Pronouncements

In March 2020, *Accounting Standards Update (ASU) 2020-04, Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*, was issued to provide temporary optional expedients and exceptions to the GAAP guidance on contract modifications and hedge accounting to ease the financial reporting burdens related to the expected market transition from the London Interbank Offered Rate (LIBOR) and other interbank offered rates to alternative reference rates. This update is effective starting March 12, 2020 and the Company may elect to apply the amendments prospectively through December 31, 2022. The Company is evaluating the adoption method as well as the impact this update will have on the consolidated financial statements.

In March 2020, *Accounting Standards Update (ASU) 2020-03, Codification Improvements to Financial Instruments*, was issued to make various codification improvements to financial instruments to make the standards easier to understand and apply by eliminating inconsistencies and providing clarifications. This update will be effective at various dates as described in this ASU. The Company is evaluating the adoption method as well as the impact this update will have on the consolidated financial statements.

In February 2020, *Accounting Standards Update (ASU) 2020-02, Financial Instruments—Credit Losses (Topic 326) and Leases (Topic 842)*, was issued to add a note to an SEC paragraph of the FASB's Accounting Standards Codification stating that the SEC staff would not object to a public business entity that otherwise would not meet the definition of a public business entity except for a requirement to include or the inclusion of its financial statements or financial information in another entity's filing with the SEC adopting Topic 842. This update is effective for fiscal years beginning after December 15, 2020. This update requires a modified retrospective adoption method. The Company is evaluating the adoption method as well as the impact this update will have on the unaudited interim condensed consolidated financial statements.

In January 2020, *Accounting Standards Update (ASU) 2020-01, Investments—Equity Securities (Topic 321), Investments—Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815)*, was issued to clarify the interaction of the accounting rules for equity securities under Topic 321, investments accounted for under the equity method of accounting in Topic 323 and the accounting for certain forward contracts and purchased options accounted for under Topic 815. This update is effective for fiscal years beginning after December 15, 2020. The Company is evaluating the adoption method as well as the impact this update will have on the condensed consolidated financial statements.

Item 3 — Quantitative and Qualitative Disclosures about Market Risk

From time to time, we may invest our cash in government, government backed and interest-bearing investment-grade securities that we generally hold for the duration of the term of the respective instrument. We do not utilize derivative financial instruments, derivative commodity instruments or other market risk sensitive instruments, positions or transactions in any material fashion, except for the Capped Call and Common Stock Forward purchased in March 2018 related to the issuance of \$100 million Convertible Senior Notes. We are not subject to any material risks arising from changes in interest rates, foreign currency exchange rates, commodity prices, equity prices or other market changes that affect market risk sensitive instruments.

Our exposure to changes in foreign currency rates is primarily related to sourcing inventory from foreign locations and operations of HyPulsion, S.A.S., our French subsidiary that develops and sells hydrogen fuel cell systems for the European material handling market. This practice can give rise to foreign exchange risk resulting from the varying cost of inventory to the receiving location. The Company reviews the level of foreign content as part of its ongoing evaluation of overall sourcing strategies and considers the exposure to be not significant. Our HyPulsion exposure presently is mitigated by low levels of operations and its sourcing is primarily intercompany in nature and denominated in U.S. dollars.

Item 4 — Controls and Procedures

(a) Disclosure controls and procedures.

The chief executive officer and chief financial officer, based on their evaluation of disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) as of the end of the period covered by this Quarterly Report on Form 10-Q, have concluded that the Company's disclosure controls and procedures are effective for ensuring that information required to be disclosed in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in filed or submitted reports is accumulated and communicated to the Company's management, including its principal executive officer and principal financial officer as appropriate, to allow timely decisions regarding required disclosure.

(b) Changes in internal control over financial reporting.

There were no changes in the Company's internal control over financial reporting that occurred during the last fiscal quarter that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1 — Legal Proceedings

On August 28, 2018, a lawsuit was filed on behalf of multiple individuals against the Company and five corporate co-defendants in the 9th Judicial District Court, Rapides Parish, Louisiana. The lawsuit relates to the previously disclosed May 2018 accident involving a forklift powered by the Company's fuel cell at a Procter & Gamble facility in Louisiana. The lawsuit alleges claims against the Company and co-defendants, including Structural Composites Industries, Deep South Equipment Co., Air Products and Chemicals, Inc., and Hyster-Yale Group, Inc. for claims under the Louisiana Product Liability Act, or LPLA, including defect in construction and/or composition, design defect, inadequate warning, breach of express warranty and negligence for wrongful death and personal injuries, among other damages. Procter & Gamble has intervened in that suit to recover worker's compensation benefits paid to or for the employees/dependents. Procter & Gamble has also filed suit for property damage, business interruption, loss of revenue, expenses, and other damages. Procter & Gamble alleges theories under the LPLA, breach of warranty and quasi-contractual claims under Louisiana law. Defendants include the Company and several of the same co-defendants from the August 2018 lawsuit, including Structural Composites Industries, Deep South Equipment Co., and Hyster-Yale Group, Inc. The Company intends to vigorously defend both cases. Given the early stage of these matters, the Company is unable to determine the likelihood of an adverse outcome. While the amount of damages sought in the lawsuits is yet unspecified, the Company does not expect the lawsuits to have a material impact on the Company's financial position, liquidity or results of operations, or to otherwise have a material adverse effect on the Company.

Item 1A - Risk Factors

Our operations and financial results are subject to various risks and uncertainties including those described below. The following risk factors should be considered carefully in addition to the other information contained in this Quarterly Report on Form 10-Q as well as our other public filings with the SEC, including our Annual Report on Form 10-K for the year ended December 31, 2019, filed with the SEC on March 10, 2020. The occurrence of any of the following

material risks could harm our business and future results of operations and could result in the trading price of our common stock declining and a partial or complete loss of your investment. These risks are not the only ones that we face. Additional risks not presently known to us or that we currently consider immaterial may also impair our business operations and trading price of our common stock. The discussion contained in this Quarterly Report on Form 10-Q contains “forward-looking statements,” within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act, that involve risks and uncertainties. Please refer to the section entitled “Forward-Looking Statements.”

A. MARKET RISKS

A pandemic, epidemic or outbreak of an infectious disease, such as COVID-19, may materially and adversely impact our business, our operations and our financial results.

The recent outbreak of COVID-19, which surfaced in Wuhan, China, in December 2019, has since been declared a pandemic and has spread to multiple global regions, including the United States and Europe. To date, multiple state and national governments—including those in New York and Washington, where our manufacturing facilities are located—have issued orders requiring businesses that do not conduct essential services to temporarily close their physical workplaces to employees and customers. We are currently deemed an essential business and, as a result, are exempt from these state orders, in their current form. In March 2020, we put in place a number of protective measures in response to the COVID-19 outbreak. These measures include the canceling of all commercial air travel and all but other critical travel, requesting that employees limit non-essential personal travel, eliminating all but essential third-party access to our facilities, enhancing our facilities' janitorial and sanitary procedures, encouraging employees to work from home to the extent their job function enables them to do so, encouraging the use of virtual employee meetings, and providing staggered shifts and social distancing measures for those employees associated with manufacturing and service operations.

We cannot predict at this time the full extent to which COVID-19 will impact our business, results and financial condition, which will depend on many factors. We are staying in close communication with our manufacturing facilities, employees, customers, suppliers and partners, and acting to mitigate the impact of this dynamic and evolving situation, but there is no guarantee that we will be able to do so. Although as of the date hereof, we have not observed any material impacts to our supply of components, the situation is fluid. Many of the parts for our products are sourced from suppliers in China and the manufacturing situation in China remains variable. Supply chain disruptions could reduce the availability of key components, increase prices or both. Some of our customers, such as certain automotive manufacturers, have suspended operations at their facilities due to COVID-19. Accordingly, while those customers continue to pay for the leasing and servicing of our products, they are not purchasing hydrogen fuel. Other customers are essential businesses and remain in operation. Certain of these customers, such as Walmart, significantly increased their use of units and hydrogen fuel consumption as a result of COVID-19. In the quarter ended March 31, 2020, our services and power purchase agreement margins were negatively impacted by incremental service costs associated with increased usage of units at some of our primary customer sites. Future changes in applicable government orders or regulations, or changes in the interpretation of existing orders or regulations, could result in further disruptions to our business that may materially and adversely affect our financial condition and results of operations. To the extent the COVID-19 pandemic adversely affects our business and financial results, it may also have the effect of heightening many of the other risks described in this “Risk Factors” section.

Our products and performance depend largely on the availability of hydrogen gas and an insufficient supply of hydrogen could negatively affect our sales and deployment of our products and services.

Our products and services depend largely on the availability of hydrogen gas. We are dependent upon hydrogen suppliers for success with the profitable commercialization of our products and services. Although we will continue to work with hydrogen suppliers to mutually agree on terms for our customers, including, but not limited to, the competitiveness of the price of the hydrogen fuel, liquid hydrogen, hydrogen infrastructure and service costs, to the benefit of our product value proposition, ultimately we have no control over such third parties. If these fuels are not readily available or if their prices are such that energy produced by our products costs more than energy provided by other sources, then our products could be less attractive to potential users and our products' value proposition could be negatively

affected. If hydrogen suppliers elect not to participate in the material handling market, there may be an insufficient supply of hydrogen for this market that could negatively affect our sales and deployment of our products and services.

We will continue to be dependent on certain third-party key suppliers for components in our products. The failure of a supplier to develop and supply components in a timely manner or at all, or our inability to obtain substitute sources of these components on a timely basis or on terms acceptable to us, could impair our ability to manufacture our products or could increase our cost of production.

We rely on certain key suppliers for critical components in our products, and there are numerous other components for our products that are sole sourced. If we fail to maintain our relationships with our suppliers or build relationships with new suppliers, or if suppliers are unable to meet our demand, we may be unable to manufacture our products, or our products may be available only at a higher cost or after a delay. In addition, to the extent that our supply partners use technology or manufacturing processes that are proprietary, we may be unable to obtain comparable components from alternative sources.

The failure of a supplier to develop and supply components in a timely manner or at all, or to develop or supply components that meet our quality, quantity and cost requirements, or our inability to obtain substitute sources of these components on a timely basis or on terms acceptable to us, could impair our ability to manufacture our products or could increase our cost of production. If we cannot obtain substitute materials or components on a timely basis or on acceptable terms, we could be prevented from delivering our products to our customers within required timeframes. Any such delays could result in sales and installation delays, cancellations, penalty payments or loss of revenue and market share, any of which could have a material adverse effect on our business, results of operations, and financial condition.

Given the current COVID-19 pandemic, we are staying in close communication with our suppliers and acting to mitigate the impact of this dynamic and evolving situation. There is no guarantee we will be able to do so. Although as of the date hereof, we have not observed any material impact to our supply of components, the situation is fluid. Many of our parts for our products are sourced from suppliers in China and the manufacturing situation in China remains variable. Supply chain disruptions could reduce the availability of key components, increase prices or both.

Volatility in commodity prices and product shortages may adversely affect our gross margins.

Some of our products contain commodity-priced materials. Commodity prices and supply levels affect our costs. For example, platinum is a key material in our PEM fuel cells. Platinum is a scarce natural resource and we are dependent upon a sufficient supply of this commodity.

Any shortages could adversely affect our ability to produce commercially viable fuel cell systems and significantly raise our cost of producing our fuel cell systems. While we do not anticipate significant near- or long-term shortages in the supply of platinum, a shortage could adversely affect our ability to produce commercially viable PEM fuel cells or raise our cost of producing such products. Our ability to pass on such increases in costs in a timely manner depends on market conditions, and the inability to pass along cost increases could result in lower gross margins.

Our ability to source parts and raw materials from our suppliers could be disrupted or delayed in our supply chain which could adversely affect our results of operations.

Our operations require significant amounts of necessary parts and raw materials. We deploy a continuous, companywide process to source our parts and raw materials from fewer suppliers, and to obtain parts from suppliers in low-cost countries where possible. If we are unable to source these parts or raw materials, our operations may be disrupted, or we could experience a delay or halt in certain of our manufacturing operations. We believe that our supply management and production practices are based on an appropriate balancing of the foreseeable risks and the costs of alternative practices. Nonetheless, reduced availability or interruption in supplies, whether resulting from more stringent regulatory requirements; supplier financial condition; increases in duties and tariff costs; disruptions in transportation; an outbreak of a severe public health pandemic, such as the recent COVID-19 pandemic; severe weather; the occurrence or threat of wars or other conflicts, could have an adverse effect on our financial condition, results of operations and cash flows. Also, see “We will continue to be dependent on certain third-party key suppliers for components in our products. The failure of a

supplier to develop and supply components in a timely manner or at all, or our inability to obtain substitute sources of these components on a timely basis or on terms acceptable to us, could impair our ability to manufacture our products or could increase our cost of production” above for further discussion of risks associated with the recent COVID-19 pandemic.

We depend on a concentration of anchor customers for the majority of our revenues and the loss of any of these customers would adversely affect our business, financial condition, results of operations and cash flows.

We sell most of our products to a range of customers that include a few anchor customers, and while we are continually seeking to expand our customer base, we expect this will continue for the next several years. For example, for the three months ended March 31, 2020, 65.9% of our total consolidated revenues were associated primarily with two customers. For the three months ended March 31, 2019, 56.2% of our total consolidated revenues were associated primarily with two customers. Any decline in business with significant customers could have an adverse impact on our business, financial condition and results of operations. Our future success is dependent upon the continued purchases of our products by a small number of customers. If we are unable to broaden our customer base and expand relationships with potential customers, our business will continue to be impacted by demand fluctuations due to our dependence on a small number of customers. Demand fluctuations can have a negative impact on our revenues, business, financial condition, results of operations and cash flows. Our dependence on a small number of major customers exposes us to additional risks. A slowdown, delay or reduction in a customer’s orders could result in excess inventories or unexpected quarterly fluctuations in our operating results and liquidity. Each of our major customers has significant purchasing leverage over us to require changes in sales terms including pricing, payment terms and product delivery schedules, which could adversely affect our business, financial condition, results of operations and cash flows. At March 31, 2020, three customers comprised approximately 85.2% of the total account receivable balance. At December 31, 2019, two customers comprised approximately 63.4% of the total accounts receivable balance. If one of our major customers delays payment of or is unable to pay their receivables, that could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Weakness in the economy, market trends and other conditions affecting the profitability and financial stability of our customers could negatively impact our sales growth and results of operations.

The demand for our products and services is sensitive to the production activity, capital spending and demand for products and services of our customers. Many of our customers operate in markets that are subject to cyclical fluctuations resulting from market uncertainty, trade and tariff policies, costs of goods sold, currency exchange rates, central bank interest rate changes, foreign competition, offshoring of production, oil and natural gas prices, geopolitical developments, labor shortages, inflation, deflation, and a variety of other factors beyond our control. Any of these factors could cause customers to idle or close facilities, delay purchases, reduce production levels, or experience reductions in the demand for their own products or services.

Any of these events could also reduce the volume of products and services these customers purchase from us or impair the ability of our customers to make full and timely payments and could cause increased pressure on our selling prices and terms of sale. Accordingly, a significant or prolonged slowdown in activity in the United States or any other major world economy, or a segment of any such economy, could negatively impact our sales growth and results of operations.

As a result of the current COVID-19 pandemic, some of our customers, such as certain automotive manufacturers, have suspended operations at their facilities. Accordingly, while those customers continue to pay for the leasing and servicing of our products as applicable, they are not purchasing hydrogen fuel. Other customers are essential businesses and remain in operations. Certain of these customers, such as Walmart, significantly increased their use of units and hydrogen fuel consumption as a result of COVID-19. In the quarter ended March 31, 2020, our services and power purchase agreement margins were negatively impacted by incremental service costs associated with increased usage of units at some of our primary customer sites. Continuation of the COVID-19 pandemic could further disrupt our business and may materially and adversely affect our financial condition and results of operations.

We face risks associated with our plans to market, distribute and service our products and services internationally.

We have begun to market, distribute, sell and service our product offerings internationally. We have limited experience operating internationally, including developing and manufacturing our products to comply with the commercial and legal requirements of international markets. Our success in international markets will depend, in part, on our ability and that of our partners to secure relationships with foreign sub-distributors, and our ability to manufacture products that meet foreign regulatory and commercial requirements. Additionally, our planned international operations are subject to other inherent risks, including potential difficulties in enforcing contractual obligations and intellectual property rights in foreign countries, and could be adversely affected due to fluctuations in currency exchange rates, political and economic instability, acts or threats of terrorism, changes in governmental policies or policies of central banks, expropriation, nationalization and/or confiscation of assets, price controls, fund transfer restrictions, capital controls, exchange rate controls, taxes, unfavorable political and diplomatic developments, changes in legislation or regulations and other additional developments or restrictive actions over which we will have no control.

Doing business in foreign markets requires us to be able to respond to rapid changes in market, legal, and political conditions in these countries. As we expand in international markets, we may face numerous challenges, including unexpected changes in regulatory requirements; potential conflicts or disputes that countries may have to deal with; required compliance with anti-bribery laws, such as the U.S. Foreign Corrupt Practices Act, data privacy requirements, labor laws and anti-competition regulations; export or import restrictions; laws and business practices favoring local companies; fluctuations in currency exchange rates; longer payment cycles and difficulties in collecting accounts receivables; difficulties in managing international operations; potentially adverse tax consequences, tariffs, customs charges, bureaucratic requirements and other trade barriers; restrictions on repatriation of earnings and the burdens of complying with a wide variety of international laws. Any of these factors could adversely affect our results of operations and financial condition. The success of our international expansion will depend, in part, on our ability to succeed in navigating the different legal, regulatory, economic, social and political environments. For example, the United Kingdom formally left the European Union on January 31, 2020, at which point a transition period began. The United Kingdom is expected to continue to follow certain European Union rules during the transition period; however, the ongoing process of negotiations between the United Kingdom and the European Union will determine the future terms of the United Kingdom's relationship with the European Union, including access to European Union markets, either during the transitional period or more permanently. We have no control over and cannot predict the effect of the United Kingdom's exit from the European Union nor over whether and to which effect any other member state will decide to exit the European Union in the future. These developments, as well as potential crises and forms of political instability arising therefrom or any other as of yet unforeseen development, may harm our business.

Our products and services face intense competition.

The markets for energy products are intensely competitive. Some of our competitors in the motive power sector (predominantly incumbent technologies) are much larger than we are and may have the manufacturing, marketing and sales capabilities to complete research, development and commercialization of profitable, commercially viable products more quickly and effectively than we can. There are many companies engaged in all areas of traditional and alternative energy generation in the United States and abroad, including, among others, major electric, oil, chemical, natural gas, battery, generator and specialized electronics firms, as well as universities, research institutions and foreign government-sponsored companies. These firms are engaged in forms of power generation such as advanced battery technologies, generator sets, fast charged technologies and other types of fuel cell technologies. In addition, the primary current value proposition for our customers stems from productivity gains in using our solutions. Longer term, given evolving market dynamics and changes in alternative energy tax credits, if we are unable to successfully develop future products that are competitive with competing technologies in terms of price, reliability and longevity, customers may not buy our products. Technological advances in alternative energy products, battery systems or other fuel cell technologies may make our products less attractive or render them obsolete.

B. FINANCIAL AND LIQUIDITY RISKS

If we cannot obtain financing to support the sale or leasing of our products and services to customers, such failure may adversely affect our liquidity and financial position.

Customers representing most of our revenue lease, rather than purchase, our products. These lease arrangements require us and our customers to finance the purchase of such products, either ourselves or through third-party financing sources. To date, we have been successful in obtaining or providing the necessary financing arrangements. There is no certainty, however, that we will be able to continue to obtain or provide adequate financing for these arrangements on acceptable terms, or at all, in the future. Failure to obtain or provide such financing may result in the loss of material customers and product sales, which could have a material adverse effect on our business, financial condition and results of operations. Further, if we are required to continue to pledge or restrict substantial amounts of our cash to support these financing arrangements, such cash will not be available to us for other purposes, which may have a material adverse effect on our liquidity and financial position. For example, approximately \$230.0 million of our cash is currently restricted to support such leasing arrangements, which prevents us from using such cash for other purposes.

We may require additional capital funding and such capital may not be available to us.

On March 31, 2020, we had cash and cash equivalents of \$74.3 million, restricted cash of \$232.9 million and net working capital of \$125.4 million. This compares to \$139.5 million, \$230.0 million and \$162.5 million of cash and cash equivalents, restricted cash and net working capital, respectively, on December 31, 2019.

Our cash requirements relate primarily to working capital needed to operate and grow our business, including funding operating expenses, growth in inventory to support both shipments of new units and servicing the installed base, growth in equipment leased to customers under long-term arrangements, funding the growth in our GenKey “turn-key” solution, which includes the installation of our customers’ hydrogen infrastructure as well as delivery of the hydrogen fuel, continued expansion of our markets, such as Europe and China, continued development and expansion of our products, such as Pro Gen, payment of lease obligations under sale/leaseback financings, and the repayment or refinancing of our long-term debt. Our ability to meet future liquidity needs and capital requirements will depend upon numerous factors, including the timing and quantity of product orders and shipments; attaining and expanding positive gross margins across all product lines; the timing and amount of our operating expenses; the timing and costs of working capital needs; the timing and costs of building a sales base; the ability of our customers to obtain financing to support commercial transactions; our ability to obtain financing arrangements to support the sale or leasing of our products and services to customers, including financing arrangements to repay or refinance our long-term debt, and the terms of such agreements that may require us to pledge or restrict substantial amounts of our cash to support these financing arrangements; the timing and costs of developing marketing and distribution channels; the timing and costs of product service requirements; the timing and costs of hiring and training product staff; the extent to which our products gain market acceptance; the timing and costs of product development and introductions; the extent of our ongoing and new research and development programs; and changes in our strategy or our planned activities. If we are unable to fund our operations with positive cash flows and cannot obtain external financing, we may not be able to sustain future operations. As a result, we may be required to delay, reduce and/or cease our operations and/or seek bankruptcy protection.

We cannot assure you that any necessary additional financing will be available on terms favorable to us, or at all. We believe that it could be difficult to raise additional funds and there can be no assurance as to the availability of additional financing or the terms upon which additional financing may be available. Additionally, even if we raise sufficient capital through additional equity or debt financings, strategic alternatives or otherwise, there can be no assurance that the revenue or capital infusion will be sufficient to enable us to develop our business to a level where it will be profitable or generate positive cash flow. If we incur additional debt, a substantial portion of our operating cash flow may be dedicated to the payment of principal and interest on such indebtedness, thus limiting funds available for our business activities. The terms of any debt securities issued could also impose significant restrictions on our operations. Broad market and industry factors may seriously harm the market price of our common stock, regardless of our operating performance, and may adversely impact our ability to raise additional funds. If we raise additional funds through collaborations and/or licensing arrangements, we might be required to relinquish significant rights to our technologies or grant licenses on terms that are not favorable to us.

We have incurred losses and anticipate continuing to incur losses.

We have not achieved operating profitability in any quarter since our formation and we will continue to incur net losses until we can produce sufficient revenue to cover our costs. Our net losses were approximately \$37.5 million and \$31.0 million for the three months ended March 31, 2020 and 2019, respectively. As of March 31, 2020, we had an accumulated deficit of \$1.4 billion. We anticipate that we will continue to incur losses until we can produce and sell our products on a large-scale and cost-effective basis. We cannot guarantee when we will operate profitably, if ever. In order to achieve profitability, we must successfully execute our planned path to profitability in the early adoption markets on which we are focused. The profitability of our products depends largely on material and manufacturing costs and the market price of hydrogen. The hydrogen infrastructure that is needed to support our growth readiness and cost efficiency must be available and cost efficient. We must continue to shorten the cycles in our product roadmap with respect to improvement in product reliability and performance that our customers expect. We must execute on successful introduction of our products into the market. We must accurately evaluate our markets for, and react to, competitive threats in both other technologies (such as advanced batteries) and our technology field. Finally, we must continue to lower our products' build costs and lifetime service costs. If we are unable to successfully take these steps, we may never operate profitably, and, even if we do achieve profitability, we may be unable to sustain or increase our profitability in the future. Also, see "Weakness in the economy, market trends and other conditions affecting the profitability and financial stability of our customers could negatively impact our sales growth and results of operations" above for discussion of impact of COVID-19 pandemic.

Our indebtedness could adversely affect our liquidity, financial condition and our ability to fulfill our obligations and operate our business.

At March 31, 2020, our total outstanding indebtedness was approximately \$219.6 million, consisting of \$40.3 million of the \$40.0 million in aggregate principal amount of 7.5% Convertible Senior Note due on January 5, 2023, \$72.6 million of the \$100.0 million in aggregate principal amount of 5.5% Convertible Senior Notes due on March 15, 2023 and \$106.9 million of outstanding indebtedness primarily associated with our Term Loan Facility, with Generate Lending, LLC, or the Term Loan Facility, and other long-term debt.

Our high level of indebtedness could have negative consequences on our future operations, including:

- we may have difficulty satisfying our obligations with respect to our outstanding debt;
- we may have difficulty obtaining financing in the future for working capital, capital expenditures, acquisitions or other purposes;
- we may need to use all, or a substantial portion, of our available cash flow to pay interest and principal on our debt, which will reduce the amount of money available to finance our operations and other business activities;
- our vulnerability to general economic downturns and adverse industry conditions could increase;
- our flexibility in planning for, or reacting to, changes in our business and in our industry in general could be limited;
- our amount of debt and the amount we must pay to service our debt obligations could place us at a competitive disadvantage compared to our competitors that may have less debt; and
- our failure to comply with the covenants in the agreement governing our Term Loan Facility which, among other things, limit our ability to incur debt and sell assets, could result in an event of default that, if not cured or waived, could have a material adverse effect on our business or prospects.

Our level of indebtedness will require that we use a substantial portion of our cash flow from operations to pay principal of, and interest on, our indebtedness, which will reduce the availability of cash to fund working capital requirements, capital expenditures, research and development and other general corporate or business activities. Our ability to generate cash to repay our indebtedness is subject to the performance of our business, as well as general

economic, financial, competitive and other factors that are beyond our control. If our business does not generate sufficient cash flow from operating activities or if future borrowings are not available to us in amounts sufficient to enable us to fund our liquidity needs, our operating results and financial condition may be adversely affected.

The agreement governing our Term Loan Facility contains covenant restrictions that may limit our ability to operate our business.

We may be unable to respond to changes in business and economic conditions, engage in transactions that might otherwise be beneficial to us, or obtain additional financing, because the agreement governing our Term Loan Facility contains covenant restrictions that limit our ability to, among other things: incur additional debt, create liens, make acquisitions, make loans, pay dividends, dissolve, or enter into leases and asset sale. In addition, the agreement requires that we comply with a collateral coverage covenant that was first measured on December 31, 2019. Our ability to comply with these covenants is dependent on our future performance, which will be subject to many factors, some of which are beyond our control, including prevailing economic conditions. In addition, our failure to comply with this covenant could result in a default under our other debt instruments, which could permit the holders to accelerate such debt. If any of our debt is accelerated, we may not have sufficient funds available to repay such debt, which could materially and negatively affect our financial condition and results of operations.

Although we are currently in compliance with the covenants contained in the agreement governing our Term Loan Facility, we cannot assure you that we will be able to remain in compliance with such covenants in the future. An event of default under the agreement governing our Term Loan Facility could have a material adverse effect on our liquidity, financial condition, and results of operations.

Convertible debt securities that may be settled in cash could have a material effect on our reported financial results.

Under Accounting Standards Codification 470-20, *Debt with Conversion and Other Options*, or ASC 470-20, an entity must separately account for the liability and equity components of the convertible debt instruments (such as our \$40.0 million in aggregate principal amount of 7.5% Convertible Senior Note due on January 5, 2023 and our \$100.0 million in aggregate principal amount of 5.5% Convertible Senior Notes due on March 15, 2023) that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer's economic interest cost. The effect of ASC 470-20 on the accounting for the convertible senior notes is that the equity component is required to be included in the additional paid-in capital section of stockholders' equity on our unaudited interim consolidated balance sheet at the issuance date and the value of the equity component would be treated as debt discount for purposes of accounting for the debt component of the convertible senior notes. As a result, we are required to record a non-cash interest expense as a result of the amortization of the discounted carrying value of the convertible senior notes to their face amount over the term of the convertible senior notes. As a result, we report larger net losses (or lower net income) in our financial results because ASC 470-20 requires interest to include the amortization of the debt discount, which could adversely affect our reported or future financial results or the trading price of our common stock.

While the Company plans to settle the principal amount of the convertible senior notes in cash subject to available funding at time of settlement, we currently use the if-converted method for calculating any potential dilutive effect of the conversion option on diluted net income per share, subject to meeting the criteria for using the treasury stock method in future periods. We cannot be sure that the accounting standards in the future will permit the use of the treasury stock method. If we are unable or otherwise elect not to use the treasury stock method in accounting for the shares issuable upon conversion of the convertible senior notes, then our diluted earnings per share could be adversely affected.

The convertible note hedges may affect the value of our common stock.

In connection with the pricing of the 5.5% convertible senior notes due in 2023, which we refer to herein as the \$100 million Convertible Senior Notes, we entered into convertible note hedge transactions with one or more of the initial purchasers of the \$100 million Convertible Senior Notes and/or their respective affiliates or other financial institutions, or the option counterparties. The convertible note hedge transactions are generally expected to reduce the potential dilution upon any conversion of \$100 million Convertible Senior Notes and/or provide a source of cash to settle a portion of its

cash payments related to any excess over the principal amount upon conversion of any \$100 million Convertible Senior Notes.

The option counterparties and/or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our common stock and/or purchasing or selling our common stock in secondary market transactions prior to the maturity of the \$100 million Convertible Senior Notes (and are likely to do so during any observation period related to a conversion of \$100 million Convertible Senior Notes or following any repurchase of \$100 million Convertible Senior Notes by us on any fundamental change repurchase date or otherwise). This activity could also cause or avoid an increase or a decrease in the market price of our common stock. In addition, if any such convertible note hedge transaction fails to become effective, the option counterparties may unwind their hedge positions with respect to our common stock, which could adversely affect the value of our common stock. The potential effect, if any, of these transactions and activities on the market price of our common stock will depend in part on market conditions and cannot be ascertained at this time. Any of these activities could adversely affect the value of our common stock.

We are subject to counterparty risk with respect to the convertible note hedge transactions.

The option counterparties are financial institutions or affiliates of financial institutions and are subject to the risk that one or more of such option counterparties may default under the convertible note hedge transactions. Our exposure to the credit risk of the option counterparties is not secured by any collateral. If any option counterparty becomes subject to bankruptcy or other insolvency proceedings, we will become an unsecured creditor in those proceedings with a claim equal to our exposure at that time under our transactions with that option counterparty. Our exposure will depend on many factors but, generally, an increase in our exposure will be correlated to an increase in our common stock market price and in the volatility of the market price of our common stock. In addition, upon a default by an option counterparty, we may suffer adverse tax consequences and dilution with respect to our common stock. We can provide no assurance as to the financial stability or viability of any option counterparty.

C. OPERATIONAL RISKS

We may not be able to expand our business or manage our future growth effectively.

We may not be able to expand our business or manage future growth. We plan to continue to improve our manufacturing processes and build additional manufacturing production over the next five years, which will require successful execution of:

- expanding our existing customers and expanding to new markets;
- ensuring manufacture, delivery and installation of our products;
- implementing and improving additional and existing administrative, financial and operations systems, procedures and controls;
- hiring additional employees;
- expanding and upgrading our technological capabilities;
- managing relationships with our customers and suppliers and strategic partnerships with other third parties;
- maintaining adequate liquidity and financial resources; and
- continuing to increase our revenues from operations.

Ensuring delivery of our products is subject to many market risks, including scarcity, significant price fluctuations and competition. Maintaining adequate liquidity is dependent upon a variety of factors, including continued revenues from operations, working capital improvements, and compliance with our debt instruments. We may not be able to achieve our growth strategy and increase production capacity as planned during the foreseeable future. If we are unable to manage our growth effectively, we may not be able to take advantage of market opportunities, develop new products, satisfy customer requirements, execute our business plan, or respond to competitive pressures.

Delays in or not completing our product development goals may adversely affect our revenue and profitability.

If we experience delays in meeting our development goals, our products exhibit technical defects, or if we are unable to meet cost or performance goals, including power output, useful life and reliability, the profitable commercialization of our products will be delayed. In this event, potential purchasers of our products may choose alternative technologies and any delays could allow potential competitors to gain market advantages. We cannot assure that we will successfully meet our commercialization schedule in the future.

Periodically, we may enter into contracts with our customers for certain products that have not been developed or produced. There can be no assurance that we will complete the development of these products and meet the specifications required to fulfill customer agreements and deliver products on schedule. Pursuant to such agreements, the customers would have the right to provide notice to us if, in their good faith judgment, we have materially deviated from such agreements. Should a customer provide such notice, and we cannot mutually agree to a modification to the agreement, then the customer may have the right to terminate the agreement, which could adversely affect our future business.

Other than our current products, which we believe to be commercially viable at this time, we do not know when or whether we will successfully complete research and development of other commercially viable products that could be critical to our future. If we are unable to develop additional commercially viable products, we may not be able to generate sufficient revenue to become profitable. The profitable commercialization of our products depends on our ability to reduce the costs of our components and subsystems, and we cannot assure you that we will be able to sufficiently reduce these costs. In addition, the profitable commercialization of our products requires achievement and verification of their overall reliability, efficiency and safety targets, and we cannot assure you that we will be able to develop, acquire or license the technology necessary to achieve these targets. We must complete additional research and development to fill our product portfolios and deliver enhanced functionality and reliability in order to manufacture additional commercially viable products in commercial quantities. In addition, while we continue to conduct tests to predict the overall life of our products, we may not have run our products over their projected useful life prior to large-scale commercialization. As a result, we cannot be sure that our products will last as long as predicted, resulting in possible warranty claims and commercial failures.

Certain component quality issues have resulted in adjustments to our warranty reserves and the accrual for loss contracts.

In the past, quality issues have arisen with respect to certain components in certain products that are currently being used at customer sites. Under the terms of our extended maintenance contracts, we have had to retrofit units subject to component quality issues with replacement components to improve the reliability of our products for our customers. We recorded a provision for loss contracts related to service in prior years. Though we continue to work with our vendors on these component issues to improve quality and reliability, unanticipated additional quality issues or warranty claims may arise, and additional material charges may be incurred in the future. Quality issues also could cause profitable maintenance contracts to become unprofitable.

In addition, from time to time we experience other unexpected design, manufacturing or product performance issues. We make significant investment in the continued improvement of our products and maintain appropriate warranty reserves for known and unexpected issues; however, unknown malfunctions or defects could result in unexpected material liabilities and could adversely affect our business, financial condition, results of operation, cash flows and prospects. For example, in 2019, we commenced a field replacement program for certain composite fuel tanks that did not meet the supply contract standard, as determined by us and the manufacturer. The manufacturer of the tanks is funding the entire incremental cost of the replacement program and we are working with our customers to ensure an efficient, minimally disruptive process for the exchange. In addition, an actual or perceived problem could adversely affect the market's perception of our products resulting in a decline in demand for our products and could divert the attention of our management, which may materially and adversely affect our business, financial condition, results of operations, cash flows and prospects.

Our products use flammable fuels that are inherently dangerous substances.

Our fuel cell systems use hydrogen gas in catalytic reactions. While our products do not use this fuel in a combustion process, hydrogen gas is a flammable fuel that could leak and combust if ignited by another source. Further, any such accidents involving our products or other products using similar flammable fuels could materially suppress demand for, or heighten regulatory scrutiny of, our products.

The risk of product liability claims and associated adverse publicity is inherent in the development, manufacturing, marketing and sale of fuel cell products, including products fueled by hydrogen, a flammable gas. Any liability for damages resulting from malfunctions or design defects could be substantial and could materially adversely affect our business, financial condition, results of operations and prospects. In addition, an actual or perceived problem with our products could adversely affect the market's perception of our products resulting in a decline in demand for our products, which may materially and adversely affect our business, financial condition, results of operations and prospects.

Our purchase orders may not ship, be commissioned or installed, or convert to revenue.

Some of the orders we accept from customers require certain conditions or contingencies to be satisfied, or may be cancelled, prior to shipment or prior to commissioning or installation, some of which are outside of our control. Historically, shipments made against these orders have generally occurred between ninety days and twenty-four months from the date of acceptance of the order. The time periods from receipt of an order to shipment date and installation vary widely and are determined by a number of factors, including the terms of the customer contract and the customer's deployment plan. There may also be product redesign or modification requirements that must be satisfied prior to shipment of units under certain of our agreements. If the redesigns or modifications are not completed, some or all of our orders may not ship or convert to revenue. In certain cases, we publicly disclose anticipated, pending orders with prospective customers; however, those prospective customers may require certain conditions or contingencies to be satisfied prior to entering into a purchase order with us, some of which are outside of our control. Such conditions or contingencies that may be required to be satisfied before we receive a purchase order may include, but are not limited to, successful product demonstrations or field trials. Converting orders into revenue is also dependent upon our customers' ability to obtain financing. Some conditions or contingencies that are out of our control may include, but are not limited to, government tax policy, government funding programs, and government incentive programs. Additionally, some conditions and contingencies may extend for several years. We may have to compensate customers, by either reimbursement, forfeiting portions of associated revenue, or other methods depending on the terms of the customer contract, based on the failure on any of these conditions or contingencies. While not probable, this could have an adverse impact on our revenue and cash flow.

We are dependent on information technology in our operations and the failure of such technology may adversely affect our business.

We may experience problems with the operation of our current information technology systems or the technology systems of third parties on which we rely, as well as the development and deployment of new information technology systems, that could adversely affect, or even temporarily disrupt, all or a portion of our operations until resolved. Inabilities and delays in implementing new systems can also affect our ability to realize projected or expected cost savings. Despite the implementation of network security measures, our information technology could be penetrated by outside parties (such as computer hackers or cyber terrorists) intent on extracting information, corrupting information or disrupting business processes. Such unauthorized access could disrupt our business and could result in a loss of assets or reputational damage. Additionally, any systems failures could impede our ability to timely collect and report financial results in accordance with applicable laws.

Our future plans could be harmed if we are unable to attract or retain key personnel.

We have attracted a highly skilled management team and specialized workforce, including scientists, engineers, researchers, manufacturing, marketing and sales professionals. Our future success will depend, in part, on our ability to attract and retain qualified management and technical personnel. We do not know whether we will be successful in hiring or retaining qualified personnel. Our inability to hire qualified personnel on a timely basis, or the departure of key

employees, could materially and adversely affect our development and profitable commercialization plans and, therefore, our business prospects, results of operations and financial condition.

We may not be able to protect important intellectual property and we could incur substantial costs defending against claims that our products infringe on the proprietary rights of others.

PEM fuel cell technology was first developed in the 1950s, and fuel processing technology has been practiced on a large scale in the petrochemical industry for decades. Accordingly, we do not believe that we can establish a significant proprietary position in the fundamental component technologies in these areas. However, our ability to compete effectively will depend, in part, on our ability to protect our proprietary system-level technologies, systems designs and manufacturing processes. We rely on patents, trademarks, and other policies and procedures related to confidentiality to protect our intellectual property. However, some of our intellectual property is not covered by any patent or patent application. Moreover, we do not know whether any of our pending patent applications will issue or, in the case of patents issued or to be issued, that the claims allowed are or will be sufficiently broad to protect our technology or processes. Even if all of our patent applications are issued and are sufficiently broad, our patents may be challenged or invalidated. We could incur substantial costs in prosecuting or defending patent infringement suits or otherwise protecting our intellectual property rights. While we have attempted to safeguard and maintain our proprietary rights, we do not know whether we have been or will be completely successful in doing so. Moreover, patent applications filed in foreign countries may be subject to laws, rules and procedures that are substantially different from those of the United States, and any resulting foreign patents may be difficult and expensive to obtain and enforce. In addition, we do not know whether the U.S. Patent & Trademark Office will grant federal registrations based on our pending trademark applications. Even if federal registrations are granted to us, our trademark rights may be challenged. It is also possible that our competitors or others will adopt trademarks similar to ours, thus impeding our ability to build brand identity and possibly leading to customer confusion. We could incur substantial costs in prosecuting or defending trademark infringement suits.

Further, our competitors may independently develop or patent technologies or processes that are substantially equivalent or superior to ours. If we are found to be infringing third party patents, we could be required to pay substantial royalties and/or damages, and we do not know whether we will be able to obtain licenses to use such patents on acceptable terms, if at all. Failure to obtain needed licenses could delay or prevent the development, manufacture or sale of our products, and could necessitate the expenditure of significant resources to develop or acquire non-infringing intellectual property.

We may need to pursue lawsuits or legal action in the future to enforce our intellectual property rights, to protect our trade secrets and domain names, and to determine the validity and scope of the proprietary rights of others. If third parties prepare and file applications for trademarks used or registered by us, we may oppose those applications and be required to participate in proceedings to determine the priority of rights to the trademark. Similarly, competitors may have filed applications for patents, may have received patents and may obtain additional patents and proprietary rights relating to products or technology that block or compete with ours. We may have to participate in interference proceedings to determine the priority of invention and the right to a patent for the technology. Litigation and interference proceedings, even if they are successful, are expensive to pursue and time consuming, and we could use a substantial amount of our management and financial resources in either case.

Confidentiality agreements to which we are party may be breached, and we may not have adequate remedies for any breach. Our trade secrets may also be known without breach of such agreements or may be independently developed by competitors. Our inability to maintain the proprietary nature of our technology and processes could allow our competitors to limit or eliminate any competitive advantages we may have.

We are subject to legal proceedings and legal compliance risks that could harm our business.

From time to time, we may be subject to contract disputes or litigation. In connection with any disputes or litigation in which we are involved, we may incur costs and expenses in connection with defending ourselves or in connection with the payment of any settlement or judgment or compliance with any ruling in connection therewith. The expense of defending litigation may be significant. The amount of time to resolve lawsuits is unpredictable and defending ourselves may divert management's attention from the day-to-day operations of our business, which could adversely affect

our business, financial condition, results of operations and cash flows. In addition, an unfavorable outcome in any such litigation could have a material adverse effect on our business, results of operations, financial condition and cash flows.

Our financial results may be adversely affected by changes in accounting principles generally accepted in the United States.

Generally accepted accounting principles in the United States, or GAAP, are subject to interpretation by the Financial Accounting Standards Board, or FASB, the American Institute of Certified Public Accountants, the SEC and various bodies formed to promulgate and interpret appropriate accounting principles. See Note 2 to our unaudited interim condensed consolidated financial statements included in this report regarding the effect of new accounting pronouncements on our financial statements. Any difficulties in implementing these pronouncements could cause us to fail to meet our financial reporting obligations, which could result in regulatory discipline and harm investors' confidence in us. Further, the implementation of new accounting pronouncements or a change in other principles or interpretations could have a significant effect on our financial results.

If our estimates or judgments relating to our critical accounting policies are based on assumptions that change or prove to be incorrect, our operating results could fall below expectations of investors, resulting in a decline in our stock price.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in our unaudited interim condensed consolidated financial statements and accompanying notes. For example, our revenue recognition policy is complex, and we often must make estimates and assumptions that could prove to be inaccurate. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Significant assumptions and estimates used in preparing our unaudited interim condensed consolidated financial statements include those related to revenue recognition, loss accrual for service, leases and provision for common stock warrants. Our operating results may be adversely affected if our assumptions change or if actual circumstances differ from those in our assumptions, which could cause our operating results to fall below the expectations of investors, resulting in a decline in our stock price.

If we fail to maintain an effective system of internal controls, we may not be able to accurately report our financial results or prevent fraud.

Effective internal controls over financial reporting are necessary for us to provide reliable and accurate financial reports and effectively prevent fraud. We have devoted significant resources and time to comply with the internal control over financial reporting requirements of the Sarbanes-Oxley Act of 2002. In addition, Section 404 under the Sarbanes-Oxley Act of 2002 requires that we assess the design and operating effectiveness of our controls over financial reporting. We are required to have our auditors attest to the effectiveness of our internal control over financial reporting. Our compliance with the annual internal control report requirement will depend on the effectiveness of our financial reporting and data systems and controls. Inferior internal controls increase the possibility of errors and could cause investors to lose confidence in our reported financial information, which could have a negative effect on the trading price of our stock and our access to capital.

In addition, our internal control systems rely on people trained in the execution of the controls. Loss of these people or our inability to replace them with similarly skilled and trained individuals or new processes in a timely manner could adversely impact our internal control mechanisms.

D. REGULATORY RISKS

The reduction or elimination of government subsidies and economic incentives for alternative energy technologies, or the failure to renew such subsidies and incentives could reduce demand for our products, lead to a reduction in our revenues and adversely impact our operating results and liquidity.

We believe that the near-term growth of alternative energy technologies is affected by the availability and size of government and economic incentives. Many of these government incentives expire, phase out over time, may exhaust the allocated funding, or require renewal by the applicable authority. In addition, these incentive programs could be reduced

or discontinued for other reasons. The investment tax credit under the U.S. tax code was renewed in February 2018. The renewal allows for a 30% investment tax credit which ratchets down to 26% for 2020, 22% for 2021 and 10% for 2022 and later. The reduction, elimination, or expiration of the investment tax credit or other government subsidies and economic incentives, or the failure to renew such tax credit, governmental subsidies, or economic incentives, may result in the diminished economic competitiveness of our products to our customers and could materially and adversely affect the growth of alternative energy technologies, including our products, as well as our future operating results and liquidity.

We are subject to various federal, state and local environmental and human health and safety laws and regulations that could impose significant costs and liabilities on us.

Our operations are subject to federal, state, and local environmental and human health and safety laws and regulations, including laws and regulations relating to the use, handling, storage, transportation, disposal and human exposure to hazardous substances and wastes, product safety, emissions of pollution into the environment and human health and safety. We have incurred and expect to continue to incur, costs to comply with these laws and regulations. Violation of these laws or regulations or the occurrence of an explosion or other accident in connection with our fuel cell systems at our properties or at third party locations could lead to substantial liabilities and sanctions, including fines and penalties, cleanup costs or the requirement to undertake corrective action. Further, environmental laws and regulations, and the administration, interpretation and enforcement thereof, are subject to change and may become more stringent in the future, each of which could materially adversely affect our business, financial condition and results of operations.

Additionally, certain environmental laws impose liability, which can be joint, several and strict, on current and previous owners and operators of real property for the cost of removal or remediation of hazardous substances and damage to natural resources. These laws often impose liability even if the owner or operator did not know of, or was not responsible for, the release of such hazardous substances. They can also assess liability on persons who arrange for hazardous substances to be sent to disposal or treatment facilities when such facilities are found to be contaminated, and such persons can be responsible for cleanup costs even if they never owned or operated the contaminated facility. Our liabilities arising from past or future releases of, or exposure to, hazardous substances may adversely affect our business, financial condition and results of operations.

In March 2020, we put in place a number of protective measures in response to the COVID-19 outbreak. These measures include the cancelling of all commercial air travel and all other non-critical travel, requesting that employees limit non-essential personal travel, eliminating all by essential third-party access to our facilities, enhancing our facilities' janitorial and sanitary procedures, encouraging the use of virtual employee meetings, and providing staggered shifts and social distancing measures for those employees associated with manufacturing and service operations. Future changes in applicable government orders or regulations, or changes in the interpretations of existing orders or regulations, could result in further disruptions to our business that may materially and adversely affect our financial condition and results of operations.

Tariffs could have a material adverse effect on our business.

Our business is dependent on the availability of raw materials and components for our products, particularly electrical components common in the semiconductor industry. There is currently significant uncertainty about the future relationship between the United States and various other countries, most significantly China, with respect to trade policies, treaties, tariffs and taxes. The current U.S. presidential administration has called for substantial changes to U.S. foreign trade policy with respect to China and other countries, including the possibility of imposing greater restrictions on international trade and significant increases in tariffs on goods imported into the United States. In 2018, the Office of the U.S. Trade Representative imposed tariffs on imports into the United States from China, including steel and aluminum imports, and the countries continue to negotiate a trade deal. An increase in tariffs will cause our cost of raw materials for our products to increase, which could narrow the profits we earn from sales of products requiring such materials. Furthermore, if tariffs, trade restrictions, or trade barriers are placed on products such as ours by foreign governments, especially China, the prices for our products may increase, which may result in the loss of customers and harm to our business, financial condition and results of operations.

Although we currently maintain alternative sources for raw materials, our business is subject to the risk of price fluctuations and periodic delays in the delivery of certain raw materials, which tariffs may exacerbate. Disruptions in the

supply of raw materials and components could temporarily impair our ability to manufacture our products for our customers or require us to pay higher prices to obtain these raw materials or components from other sources, which could affect our business and our results of operations. While it is too early to predict how the enacted tariffs on imported steel and aluminum will impact our business, the imposition of tariffs on items imported by us from China or other countries could increase our costs and could have a material adverse effect on our business and our results of operations.

Our business may become subject to increased government regulation.

Our products are subject to certain federal, local, and non-U.S. laws and regulations, including, for example, state and local ordinances relating to building codes, public safety, electrical and gas pipeline connections, hydrogen transportation and siting and related matters. See “Business—Government Regulations” for additional information. In certain jurisdictions, these regulatory requirements may be more stringent than those in the United States. Further, as products are introduced into the market commercially, governments may impose new regulations. We do not know the extent to which any such regulations may impact our ability to manufacture, distribute, install and service our products. Any regulation of our products, whether at the federal, state, local or foreign level, including any regulations relating to the production, operation, installation, and servicing of our products may increase our costs and the price of our products, and noncompliance with applicable laws and regulations could subject us to investigations, sanctions, enforcement actions, fines, damages, civil and criminal penalties or injunctions. If any governmental sanctions are imposed, our business, operating results, and financial condition could be materially adversely affected. In addition, responding to any action will likely result in a significant diversion of management’s attention and resources and an increase in professional fees. Enforcement actions and sanctions could harm our business, operating results and financial condition. See “We are subject to various federal, state and local environmental and human health and safety laws and regulations that could impose significant costs and liabilities on us” above for discussion of impact of current COVID-19 pandemic.

Changes in tax laws or regulations or adverse outcomes resulting from examination of our income or other tax returns could adversely affect our operating results and financial condition.

We are subject to income taxes in the United States and various foreign jurisdictions. A number of factors may adversely affect our future effective tax rates, such as the jurisdictions in which our profits are determined to be earned and taxed; changes in the valuation of our deferred tax assets and liabilities; adjustments to estimated taxes upon finalization of various tax returns; changes in available tax credits, grants and other incentives; changes in stock-based compensation expense; the availability of loss or credit carryforwards to offset taxable income; changes in tax laws, regulations, accounting principles or interpretations thereof; or examinations by US federal, state or foreign jurisdictions that disagree with interpretations of tax rules and regulations in regard to positions taken on tax filings. A change in our effective tax rate due to any of these factors may adversely affect our future results from operations.

In addition, as our business grows, we are required to comply with increasingly complex taxation rules and practices. We are subject to tax in multiple U.S. tax jurisdictions and in foreign tax jurisdictions as we expand internationally. The development of our tax strategies requires additional expertise and may impact how we conduct our business. If our tax strategies are ineffective or we are not in compliance with domestic and international tax laws, our financial position, operating results and cash flows could be adversely affected.

E. STRATEGIC RISKS

We may be unable to establish or maintain relationships with third parties for certain aspects of continued product development, manufacturing, distribution and servicing and the supply of key components for our products.

We will need to maintain and may need to enter into additional strategic relationships in order to complete our current product development and commercialization plans. We may also require partners to assist in the sale, servicing and supply of components for our current products and anticipated products, which are in development. If we are unable to identify, enter into, and maintain satisfactory agreements with potential partners, including those relating to the supply, distribution, service and support of our current products and anticipated products, we may not be able to complete our product development and commercialization plans on schedule or at all. We may also need to scale back these plans in the absence of needed partners, which could adversely affect our future prospects for development and commercialization of

future products. While we have entered into relationships with suppliers of some key components for our products, we do not know when or whether we will secure supply relationships for all required components and subsystems for our products, or whether such relationships will be on terms that will allow us to achieve our objectives. Our business prospects, results of operations and financial condition could be harmed if we fail to secure relationships with entities that can develop or supply the required components for our products and provide the required distribution and servicing support. Additionally, the agreements governing our current relationships allow for termination by our partners under certain circumstances, some of which are beyond our control. If any of our current strategic partners were to terminate any of its agreements with us, there could be a material adverse impact on the continued development and profitable commercialization of our products and the operation of our business, financial condition, results of operations and prospects.

Also, see “We will continue to be dependent on certain third-party key suppliers for components in our products. The failure of a supplier to develop and supply components in a timely manner or at all, or our inability to obtain substitute sources of these components on a timely basis or on terms acceptable to us, could impair our ability to manufacture our products or could increase our cost of production” above for further discussion of risks associated with the recent COVID-19 pandemic.

Potential future acquisitions could be difficult to integrate, divert the attention of key personnel, disrupt our business and impair our financial results.

As part of our business strategy, we intend to consider acquisitions of companies, technologies and products. Acquisitions, involve numerous risks, any of which could harm our business, including, difficulty in integrating the technologies, products, operations and existing contracts of a target company and realizing the anticipated benefits of the combined businesses; negative perception of the acquisition by customers, financial markets or investors; difficulty in supporting and transitioning customers, if any, of the target company; inability to achieve anticipated synergies or increase the revenue and profit of the acquired business; potential disruption of our ongoing business and distraction of management; the price we pay or other resources that we devote may exceed the value we realize; or the value we could have realized if we had allocated the purchase price or other resources to another opportunity and inability to generate sufficient revenue to offset acquisition costs. In addition, if we finance acquisitions by issuing equity securities, our existing stockholders may be diluted. As a result, if our forecasted assumptions for these acquisitions and investments are not accurate, we may not achieve the anticipated benefits of any such acquisitions, and we may incur costs in excess of what we had anticipated.

We may fail to close potential future acquisitions, including those related to our hydrogen vertical integration strategy, and the failure to close such acquisitions may have a negative impact on our business and the trading price of our common stock.

As part of our business strategy, and particularly in light of our goal to vertically integrate hydrogen production into our business, we regularly pursue the acquisition of companies, technologies and products. Completion of any such acquisitions is typically subject to many risks and uncertainties, many of which may be out of our control. For example, if closing conditions are not satisfied or waived, or if other events intervene or delay the closing of the acquisitions, such conditions or events could have the effect of delaying the completion of the acquisitions or result in the acquisitions not being completed. If the acquisitions are not completed, the price of our common stock may decline to the extent that such price reflects a market assumption that the acquisitions will be completed. In addition, we may incur substantial costs in connection with future potential acquisitions, including fees of financial advisors, accountants and legal counsel, which will be payable regardless of whether the acquisitions are completed. Moreover, the successful closing of any potential future acquisitions may not achieve its intended benefits or may disrupt our plans and operations. The completion of any future acquisition may expose us to unknown or contingent liabilities for which we may not be indemnified. Failure to realize the expected costs savings and operating synergies could also result in increased costs, decreases in expected revenue, disruptions in our current plans and operations, and diversion of our management’s time and energy. Also, to the extent we finance the acquisitions by issuing equity securities, our existing stockholders may be diluted. All of these factors, among others, could cause dilution to our earnings per share, decrease or delay the expected accretive effect of the acquisitions, and/or negatively impact the price of our stock price.

F. RISKS RELATED TO THE OWNERSHIP OF OUR COMMON STOCK

Our stock price and stock trading volume have been and could remain volatile, and the value of your investment could decline.

The market price of our common stock has historically experienced and may continue to experience significant volatility. In 2019, the sales price of our common stock fluctuated from a high of \$4.04 per share to a low of \$1.23 per share. During the first quarter of 2020, our stock price fluctuated from a closing high of \$5.72 per share to a low closing price of \$2.76. Our progress in developing and commercializing our products, our quarterly operating results, announcements of new products by us or our competitors, our perceived prospects, changes in securities analysts' recommendations or earnings estimates, changes in general conditions in the economy or the financial markets, adverse events related to our strategic relationships, significant sales of our common stock by existing stockholders, including one or more of our strategic partners, and other developments affecting us or our competitors could cause the market price of our common stock to fluctuate substantially. In addition, in recent years, the stock market has experienced significant price and volume fluctuations. This volatility has affected the market prices of securities issued by many companies for reasons unrelated to their operating performance and may adversely affect the price of our common stock. Such market price volatility could adversely affect our ability to raise additional capital. In addition, we may be subject to securities class action litigation as a result of volatility in the price of our common stock, which could result in substantial costs and diversion of management's attention and resources and could harm our stock price, business, prospects, results of operations and financial condition.

The COVID-19 pandemic has caused increased volatility and dislocation in stock prices in general, including the market price of our common stock. Continuation and/or increased severity of the COVID-19 pandemic could cause additional volatility in, or have a negative impact on, our stock price.

Sales of substantial amounts of our common stock in the public markets, or the perception that such sales might occur, could reduce the price that our common stock might otherwise attain and may dilute your voting power and your ownership interest in us.

Sales of a substantial number of shares of our common stock in the public market, or the perception that such sales could occur, could adversely affect the market price of our common stock and may make it more difficult for you to sell your common stock at a time and price that you deem appropriate. As of March 31, 2020, there were approximately 43,630,020 shares of common stock issuable upon conversion of the 5.5% Convertible Senior Notes due March 2023 at a conversion price of \$2.29 per share, 15,503,876 shares of common stock issuable upon conversion of the 7.5% Convertible Senior Note due January 2023 at a conversion price of \$2.58 per share, and 2,782,075 shares of common stock issuable upon conversion of the Series C Redeemable Convertible Preferred Stock at a conversion price of \$0.2343 per share. In addition, as of March 31, 2020, we had outstanding options exercisable for an aggregate of 19,803,872 shares of common stock at a weighted average exercise price of \$2.57 per share and 110,573,392 shares of common stock issuable upon the exercise of warrants, 26,188,434 of which were vested as of March 31, 2020.

Moreover, subject to market conditions and other factors, we may conduct future offerings of equity or debt securities. Sales of substantial amounts of our common stock in the public market, or the perception that these sales could occur, could reduce the market price of our common stock to decline. In addition, the conversion of the notes or preferred stock or the exercise of outstanding options and warrants and future equity issuances will result in dilution to investors. The market price of our common stock could fall as a result of resales of any of these shares of common stock due to an increased number of shares available for sale in the market.

If securities analysts do not publish research or reports or if they publish unfavorable or inaccurate research about our business and our stock, the price of our stock and the trading volume could decline.

We expect that the trading market for our common stock will be affected by research or reports that industry or financial analysts publish about us or our business. There are many large, well-established companies active in our industry and portions of the markets in which we compete, which may mean that we receive less widespread analyst coverage than our competitors. If one or more of the analysts who covers us downgrades their evaluations of our company or our stock,

the price of our stock could decline. If one or more of these analysts cease coverage of our company, our stock may lose visibility in the market, which in turn could cause our stock price to decline.

Provisions in our charter documents and Delaware law may discourage or delay an acquisition of the Company by a third party that stockholders may consider favorable.

Our certificate of incorporation, our bylaws, and Delaware corporate law contain provisions that could have an anti-takeover effect and make it harder for a third party to acquire us without the consent of our board of directors. These provisions may also discourage proxy contests and make it more difficult for our stockholders to take some corporate actions, including the election of directors. These provisions include: the ability of our board of directors to issue shares of preferred stock in one or more series and to determine the terms of those shares, including preference and voting rights, without a stockholder vote; the exclusive right of our board of directors to elect a director to fill a vacancy created by the expansion of our board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors; the inability of stockholders to call a special meeting of stockholders; the prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders; advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted on by stockholders at stockholder meetings, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of us; the ability of our board of directors, by majority vote, to amend the bylaws, which may allow our board of directors to take additional actions to prevent an unsolicited takeover and inhibit the ability of an acquirer to amend the bylaws to facilitate an unsolicited takeover attempt; and staggered terms for our directors, which effectively prevents stockholders from electing a majority of the directors at any one annual meeting of stockholders.

In addition, as a Delaware corporation, we are subject to Section 203 of the Delaware General Corporation Law. These provisions may prohibit large stockholders, in particular those owning 15% or more of our outstanding voting stock, from merging or combining with us for a certain period of time.

We do not anticipate paying any dividends on our common stock.

We do not anticipate paying any cash dividends on our common stock in the foreseeable future. If we do not pay cash dividends, you would receive a return on your investment in our common stock only if the market price of our common stock is greater at the time you sell your shares than the market price at the time you bought your shares.

Item 2 - Unregistered Sales of Equity Securities and Use of Proceeds

- (a) None.
- (b) Not applicable.
- (c) None.

Item 3 — Defaults Upon Senior Securities

None.

Item 4 — Mine Safety Disclosures

None.

Item 5 — Other Information

- (a) None.
- (b) None.

Item 6 — Exhibits

- 1.1 [At Market Issuance Sales Agreement, dated April 13, 2020, by and between Plug Power Inc. and B. Riley FBR, Inc.](#)
- 10.1 (1) [Fifth Amendment to Loan and Security Agreement, dated as of May 6, 2020, by and among Plug Power Inc., Emerging Power Inc., Emergent Power Inc. and Generate Lending, LLC](#)
- 31.1 (1) [Certification pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 31.2 (1) [Certification pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 32.1 (1) [Certification pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)
- 32.2 (1) [Certification pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)
- 101.INS* XBRL Instance Document (1)
- 101.SCH* XBRL Taxonomy Extension Schema Document (1)
- 101.CAL* XBRL Taxonomy Extension Calculation Linkbase Document (1)
- 101.DEF* XBRL Taxonomy Extension Definition Linkbase Document (1)
- 101.LAB* XBRL Taxonomy Extension Labels Linkbase Document (1)
- 101.PRE* XBRL Taxonomy Extension Presentation Linkbase Document (1)

(1) Filed herewith.

* Submitted electronically herewith.

Signatures

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

PLUG POWER INC.

Date: May 8, 2020

By: /s/ Andrew Marsh

Andrew Marsh
President, Chief Executive
Officer and Director (Principal
Executive Officer)

Date: May 8, 2020

By: /s/ Paul B. Middleton

Paul B. Middleton
Chief Financial Officer (Principal
Financial Officer)

FIFTH AMENDMENT TO LOAN AND SECURITY AGREEMENT

THIS FIFTH AMENDMENT TO LOAN AND SECURITY AGREEMENT (this “Amendment”) is dated as of May 6, 2020, by and among **PLUG POWER INC.**, a Delaware corporation (“Plug Power”), **EMERGENT POWER INC.**, a Delaware corporation (“Emergent”), **EMERGING POWER INC.**, a Delaware corporation (“Emerging”), and individually or collectively with Plug Power and Emergent as the context may require, “Borrower”), and **GENERATE PPL SPV I, LLC**, as assignee of Generate Lending, LLC (the “Lender”).

WHEREAS, Borrower and Lender are parties to a Loan and Security Agreement dated as of March 29, 2019 (as amended by the First Amendment to Loan and Security Agreement, dated as of March 29, 2019, the Second Amendment to Loan and Security Agreement, dated as of August 6, 2019, the Third Amendment to Loan and Security Agreement, dated as of September 6, 2019, the Fourth Amendment to Loan and Security Agreement, dated as of November 27, 2019, the Limited Consent to Loan and Security Agreement, dated as of April 6, 2020, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time, including by this Amendment, the “Loan Agreement”), pursuant to which Lender has made a term loan facility available to Borrower; and

WHEREAS, Borrower and Lender have agreed to modify certain provisions of the Loan Agreement as more particularly set forth in this Amendment, including to establish a new Incremental Term Loan Commitment.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Capitalized Terms; Effective Date. Capitalized terms used in this Amendment which are not otherwise defined herein shall have the meanings assigned thereto in the Loan Agreement, as modified by this Amendment. Except as expressly provided to the contrary herein, all modifications to the Loan Agreement set forth herein shall be effective as of the date of this Amendment.

2. Amendments. The Loan Agreement, including the Recitals thereto, is hereby amended as follows:

a. Section 1.1 is hereby amended by adding the following new defined terms in appropriate alphabetical order:

““Additional Incremental Advance Date” has the meaning assigned to such term in the Fifth Amendment.”

““Additional Incremental Term Loan” has the meaning assigned to such term in the Fifth Amendment.”

““Electronic Signature” means an electronic sound, symbol or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.”

““Fifth Amendment” means that certain Fifth Amendment to Loan and Security Agreement, dated as of May 6, 2020, by and among Borrower and Lender.”

“Fifth Amendment Effective Date’ has the meaning assigned to such term in the Fifth Amendment.”

b. Section 1.1 is hereby amended by deleting the definition of “Incremental Closing Fee” appearing therein and substituting in lieu thereof the following new definition to read in its entirety as follows:

“Incremental Closing Fee’ means, (x) with respect to any Incremental Term Loan funded prior to the Fifth Amendment Effective Date, a sum equal to one percent (1.00%) times the applicable Incremental Term Loan Commitment, and (y) with respect to any Incremental Term Loan funded on and after the Fifth Amendment Effective Date, a sum equal to two percent (2.00%) times the applicable Incremental Term Loan Commitment.”

c. Section 1.1 is hereby amended by deleting the definition of “Term Loan Interest Rate” appearing therein and substituting in lieu thereof the following new definition to read in its entirety as follows:

“Term Loan Interest Rate’ means, (a) at all times prior to the Fifth Amendment Effective Date, 12.00% per annum, and (b) at all times on and after the Fifth Amendment Effective Date, 9.50% per annum.”

d. Section 1.1 is hereby amended by deleting the definition of “Term Loan Maturity Date” appearing therein and substituting in lieu thereof the following new definition to read in its entirety as follows:

“Term Loan Maturity Date’ means October 31, 2025, or such later date as Lender may agree in its sole discretion in writing.”

e. Section 2.1(a) of the Loan Agreement is hereby amended by deleting such clause (a) in its entirety and substituting in lieu thereof the following new clause (a) to read in its entirety as follows:

“(a) Advances. Subject to the terms and conditions of this Agreement, (i) on the Closing Date, Lender will make a single Advance in the amount of Eighty-Five Million and No/100 Dollars (\$85,000,000.00) and (ii) on the Secondary Closing Date, Lender will make a single Advance in the amount of Fifteen Million and No/100 Dollars (\$15,000,000.00); provided that, as a condition to the advance made on the Secondary Closing Date, Borrower shall have paid to Lender the Secondary Closing Date Closing Fee. Borrower shall have no right to reborrow any amount repaid or prepaid with respect to any Term Loan; provided, that, Borrower shall be entitled to request and borrow Incremental Term Loans in accordance with Section 2.7.”

f. Section 2.1(e) of the Loan Agreement is hereby amended by deleting such clause (e) in its entirety and substituting in lieu thereof the following new clause (e) to read in its entirety as follows:

“(e) Resizing of Loans; Amortization Schedule. From and after the Fifth Amendment Effective Date, the Amortization Schedule shall be Schedule 2.1(d)(iii) as attached to the Fifth Amendment.”

g. Section 2.4(b) of the Loan Agreement is hereby amended by deleting such clause (b) in its entirety and substituting in lieu thereof the following new clause (b) to read in its entirety as follows:

“(b) At any time on or after August 1, 2019, at its option upon at least one (1) Business Day prior written notice to Lender from Lead Borrower, Borrower may prepay in whole or in part the outstanding Term Loans by paying the entire outstanding principal balance (or a portion thereof) and all accrued and unpaid interest thereon, and, if applicable, a prepayment charge equal to (i) if such prepayment occurs at any time during the period beginning on February 1, 2020 through and including January 31, 2021, five percent (5.0%) of the amount of Term Loans being prepaid, (ii) if such prepayment occurs at any time during the period beginning on February 1, 2021 through and including January 31, 2022, four percent (4.0%) of the amount of Term Loans being prepaid, (iii) if such prepayment occurs at any time during the period beginning on February 1, 2022 through and including January 31, 2023, three percent (3.0%) of the amount of Term Loans being prepaid, (iv) if such prepayment occurs at any time during the period beginning on February 1, 2023 through and including January 31, 2024, two percent (2.0%) of the amount of Term Loans being prepaid, and (v) if such prepayment occurs at any time on or after February 1, 2024, one percent (1.0%) of the amount of Term Loans being prepaid (any such charge specified in clause (i), (ii), (iii) or (iv), a “Prepayment Charge”). Borrower shall not be obligated to pay a Prepayment Charge (and no Prepayment Charge will be due) with respect to (x) any Term Loan that is repaid with amounts released from a Project Restricted Account or (y) any prepayment required pursuant to Section 2.1(e) or permitted pursuant to Section 7.22. Borrower agrees that the Prepayment Charge is a reasonable calculation of Lender’s lost profits in view of the difficulties and impracticality of determining actual damages resulting from an early repayment of the Advances. Notwithstanding the foregoing, Lender agrees to waive the Prepayment Charge if Lender (in its sole, absolute and unfettered discretion) agrees in writing to refinance the Term Loans prior to the Term Loan Maturity Date.”

h. Section 2.7(a)(i) of the Loan Agreement is hereby amended by deleting the reference to “One Hundred Million and No/100 Dollars (\$100,000,000.00)” appearing therein and substituting in lieu thereof “Two Hundred Twenty Million and No/100 Dollars (\$220,000,000.00)”.

i. Section 2.8 of the Loan Agreement is hereby amended by deleting such section in its entirety and substituting in lieu thereof the following new Section 2.8 to read in its entirety as follows:

“2.8 [Reserved.]”

j. The Loan Agreement is amended to add thereto a new Section 11.19 in appropriate numerical order to read in its entirety as follows:

“11.19 **Electronic Signatures**. The words ‘execution’, ‘signed’, ‘signature’, ‘delivery’ and words of like import in or relating to any document to be signed in connection with this Agreement or any other Loan Document and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar State laws based on the Uniform Electronic Transactions Act; provided, that nothing herein shall require any Person to accept electronic signatures in any form or format without its prior written consent. Without limiting the generality of the foregoing, the parties hereto hereby (a) agree that, for all purposes, including in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among Lender and Borrower, electronic images of this Agreement or any other Loan Document (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability

as any paper original, and (b) waive any argument, defense or right to contest the validity or enforceability of the Loan Documents based solely on the lack of paper original copies of any Loan Documents, including with respect to any signature pages thereto.”

k. Schedule 2.1(d)(iii) of the Loan Agreement is hereby restated in its entirety as set forth in Schedule 2.1(d)(iii) hereto.

3. Incremental Term Loan Commitment.

a. Lender hereby agrees to make,

i. on the Fifth Amendment Effective Date, an Incremental Term Loan to Borrower in an aggregate principal amount of Fifty Million and No/100 Dollars (\$50,000,000.00) (the “Primary Incremental Advance”), and

ii. from time to time, and subject to the limitations set forth in set forth in Section 2.7 of the Loan Agreement, on an Additional Incremental Advance Date, an additional Incremental Term Loan (each, an “Additional Incremental Term Loan”) to Borrower in an aggregate principal amount of not less than Ten Million and No/100 Dollars (\$10,000,000); provided, that, the aggregate principal amount of all Additional Incremental Term Loans shall not exceed Fifty Million and No/100 Dollars (\$50,000,000.00); provided, that, that Lead Borrower’s delivery of an Advance Request in connection with any Additional Incremental Term Loan shall be deemed a certification by the Chief Financial Officer of Lead Borrower, solely in his capacity as Chief Financial Officer of Lead Borrower, and not in any individual capacity, and without personal liability, in the name and on behalf of Lead Borrower that, as of the applicable Additional Incremental Advance Date, all conditions set forth in each of Section 2.7(a) and Section 4 of the Loan Agreement have been satisfied with respect to such Additional Incremental Term Loan. Borrower and Lender hereby agree that the certification set forth herein is intended to fulfill, and once such Advance Request is executed and delivered by the Chief Financial Officer of Lead Borrower does fulfill, the requirement set forth in Section 2.7(c)(ii) with respect to each Additional Incremental Term Loan.

b. In each case, such Incremental Term Loans shall be on the terms set forth herein and in the Loan Agreement (as amended hereby), and subject to the conditions set forth herein and therein. Each of the Primary Incremental Advance and each Additional Incremental Term Loan is, and shall be deemed to be, an “Incremental Term Loan” and a “Term Loan” for all purposes of the Loan Documents having terms and conditions as set forth in the Loan Documents (including but not limited to this Amendment), as amended hereby, identical to those applicable to the Term Loans outstanding immediately prior to the Fifth Amendment Effective Date.

4. Conditions to Effectiveness. This Amendment, including Lender’s commitment to make the Primary Incremental Advance, shall become effective upon the prior or concurrent satisfaction of each of the conditions specified below (such date, the “Fifth Amendment Effective Date”):

a. Borrower and Lender shall have each received one or more counterparts of this Amendment, duly executed, completed and delivered by Borrower and Lender;

b. Lead Borrower shall have delivered to Lender, (1) a Note evidencing the Incremental Term Loans described herein, issued by the Borrower, (2) an Advance Request, duly executed by Lead

Borrower's Chief Executive Officer or Chief Financial Officer, and (3) a Disbursement Authorization Letter, executed by the Borrower and including all appropriate attachments thereto;

c. Lender shall have received an executed secretary's certificate from Borrower, attaching and certifying as to (i) certified copies of resolutions of Borrower's board of directors or other governing body evidencing approval of the aggregate Incremental Term Loan Commitment, (ii) certified copies of the Certificate of Incorporation and the Bylaws, as amended through the date hereof, of Borrower, (iii) a certificate of good standing for Borrower from its state of incorporation and similar certificates from all other jurisdictions in which it does business and where the failure to be qualified would have a Material Adverse Effect, and (iv) incumbency;

d. Lender shall have received a legal opinion from Borrower's counsel in form and substance satisfactory to Lender;

e. At the time of and immediately after giving effect to this Amendment, the representations and warranties of Borrower set forth in this Amendment and the other Loan Documents shall be true and correct in all material respects with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date;

f. At the time of and immediately after giving effect to this Amendment, no Default or Event of Default shall have occurred and be continuing or shall be caused by the transactions contemplated by this Amendment; and

g. Borrower shall have paid (i) Lender the Incremental Closing Fee applicable to the Primary Incremental Advance, in an amount of \$1,000,000.00, which amount shall be paid to Lender in immediately available funds, and which fee shall be fully earned as of the date hereof and non-refundable, and (ii) all other fees and expenses of Lender in connection with the negotiation, preparation, execution and delivery of this Amendment and the Loan Document (including, without limitation, the fees and expenses of counsel to Lender).

5. Conditions to Additional Incremental Term Loans. The obligation of Lender to make any Additional Incremental Term Loan is subject to the prior or concurrent satisfaction of each of the conditions specified below (each such date, an "Additional Incremental Advance Date");

a. Borrower and Lender shall have mutually agreed that Lender shall make such Additional Incremental Term Loan on such date;

b. Lead Borrower shall have delivered to Lender, (1) an Advance Request, duly executed by Lead Borrower's Chief Executive Officer or Chief Financial Officer, and (2) a Disbursement Authorization Letter, executed by the Borrower and including all appropriate attachments thereto;

c. At the time of and immediately after giving effect to such Additional Incremental Term Loan, the representations and warranties of Borrower set forth in this Amendment and the other Loan Documents shall be true and correct in all material respects with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date;

d. At the time of and immediately after giving effect to such Additional Incremental Term Loan, no Default or Event of Default shall have occurred and be continuing or shall be caused by the making of such Additional Incremental Term Loan; and

e. Borrower shall have paid Lender the Incremental Closing Fee applicable to such Additional Incremental Term Loan, which amount shall be paid to Lender in immediately available funds, and which fee shall be fully earned as of the applicable Additional Incremental Advance Date and non-refundable.

6. Certification of Lead Borrower. On behalf of the Lead Borrower, the undersigned, solely in his capacity as Chief Financial Officer of Lead Borrower, and not in any individual capacity, and without personal liability, hereby certifies in the name and on behalf of Lead Borrower that, as of the date hereof all conditions set forth in each of Section 2.7(a) and Section 4 of the Loan Agreement have been satisfied with respect to the Primary Incremental Advance. Borrower and Lender hereby agree that the certification set forth in this Section 5 is intended to fulfill, and once this Amendment is executed and delivered by the undersigned does fulfill, the requirement set forth in Section 2.7(c)(ii) with respect to the Primary Incremental Advance.

7. No Other Modifications; Reaffirmation by the Borrower. Except as expressly modified hereby, the terms of the Loan Agreement shall remain in full force and effect in all respects, and Borrower hereby reaffirms its obligations under the Loan Agreement, as modified by this Amendment, and under each of the other Loan Documents to which it is a party.

8. References. All references in the Loan Agreement to “this Agreement,” “herein,” “hereunder” or other words of similar import, and all references to the Loan Agreement in the other Loan Documents, or any other document or instrument that refers to the Loan Agreement, shall be deemed to be references to the Loan Agreement as amended by this Amendment.

9. Applicable Law. THIS AMENDMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS.

10. Counterparts; Electronic Delivery. This Amendment may be executed in one or more counterparts (all counterparts together reflecting the signature of all parties) each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Delivery by any party to this Amendment of its signatures hereon through facsimile or other electronic image file (including .pdf) (i) may be relied upon as if this Amendment were physically delivered with an original hand-written signature of such party, and (ii) shall be binding on such party for all purposes.

11. Successors. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

12. Final Agreements. This Amendment represents the final agreement of Borrower and Lender with respect to the subject matter hereof, and may not be contradicted, modified or supplemented in any way by evidence of any prior or contemporaneous written or oral agreements of Borrower and Lender.

[Remainder of page intentionally blank; signature pages follow.]

IN WITNESS WHEREOF, Borrower and Lender have caused this Amendment to be duly executed by their duly authorized officers, under seal, all as of the date first above written.

BORROWER:

PLUG POWER INC.

By:
Name: Paul B. Middleton
Title: Chief Financial Officer

EMERGING POWER INC.

By:
Name: Paul B. Middleton
Title: Treasurer

EMERGENT POWER INC.

By:
Name: Paul B. Middleton
Title: Treasurer

[Signatures continue on following page.]

LENDER:

GENERATE PPL SPV I, LLC

By:

Name: Matan Friedman

Title: Manager

FIFTH AMENDMENT TO LOAN AND SECURITY AGREEMENT
SIGNATURE PAGE

Schedule 2.1(d)(iii): Amortization Schedule

March 31, 2019	100,000,000
June 30, 2019	100,000,000
September 30, 2019	98,534,277
December 31, 2019	114,637,565
March 31, 2020	110,539,519
June 30, 2020	144,957,662
September 30, 2020	138,328,102
December 31, 2020	125,686,991
March 31, 2021	116,026,482
June 30, 2021	107,215,594
September 30, 2021	101,247,890
December 31, 2021	89,300,680
March 31, 2022	78,419,071
June 30, 2022	67,863,700
September 30, 2022	61,748,416
December 31, 2022	51,477,792
March 31, 2023	42,937,617
June 30, 2023	34,379,696
September 30, 2023	28,049,687
December 31, 2023	16,863,087
March 31, 2024	9,086,014
June 30, 2024	0
September 30, 2024	0
December 31, 2024	0
March 31, 2025	0
June 30, 2025	0
September 30, 2025	0
December 31, 2025	0

I, Andrew Marsh, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Plug Power Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 8, 2020

by: /s/ Andrew Marsh
Andrew Marsh
Chief Executive Officer

I, Paul B. Middleton, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Plug Power Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 8, 2020

by: /s/ Paul B. Middleton
Paul B. Middleton
Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Plug Power Inc. (the "Company") on Form 10-Q for the period ending March 31, 2020 as filed with the Securities and Exchange Commission (the "SEC") on the date hereof (the "Report"), I, Andrew Marsh, Chief Executive Officer of the Company, certify, solely pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This certification is being furnished and not filed, and shall not be incorporated into any documents for any other purpose, under the Securities Exchange Act of 1934, as amended or the Securities Act of 1933, as amended. A signed original of this written statement required by § 906 has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.

/s/ Andrew Marsh
Andrew Marsh
Chief Executive Officer

May 8, 2020

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Plug Power Inc. (the "Company") on Form 10-Q for the period ending March 31, 2020 as filed with the Securities and Exchange Commission (the "SEC") on the date hereof (the "Report"), I, Paul B. Middleton, Interim Chief Financial Officer of the Company, certify, solely pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This certification is being furnished and not filed, and shall not be incorporated into any documents for any other purpose, under the Securities Exchange Act of 1934, as amended or the Securities Act of 1933, as amended. A signed original of this written statement required by § 906 has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.

/s/ Paul B. Middleton
Paul B. Middleton
Chief Financial Officer

May 8, 2020
