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

FORM 8-K

CURRENT REPORT

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

Date of report (Date of earliest event reported): June 28, 2019

FUELCELL ENERGY, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

1-14204
(Commission
File Number)

06-0853042
(IRS Employer
Identification No.)

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

06810
(Zip Code)

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

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

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

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

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

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

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

Emerging growth company

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

Item 1.01. Entry into a Material Definitive Agreement.

As previously disclosed in its Current Report on Form 8-K filed on December 26, 2018 by FuelCell Energy, Inc. (the “Company”) , on December 21, 2018, the Company, through its indirect wholly-owned subsidiary FuelCell Energy Finance II, LLC (“Borrower”), entered into a Construction Loan Agreement (the “Loan Agreement”) with Generate Lending, LLC (“Lender”) pursuant to which Lender agreed (the “Commitment”) to make available to Borrower a credit facility in an aggregate principal amount of up to \$100,000,000 and, subject to further Lender approval and available capital, up to \$300,000,000 if requested by the Company (the “Facility”) to finance the manufacture, construction, installation, commissioning and start-up of a series of stationary fuel cell projects to be developed by the Company on behalf of Borrower during the thirty-six months from the date of the Loan Agreement. In connection with the execution of the Loan Agreement by Lender and Borrower and concurrently therewith, Lender, Borrower and the Company entered into a Right to Finance Agreement, which gave the Lender an exclusive right, subject to certain exclusions and exceptions, to provide construction financing through the Facility to all of the Company’s stationary fuel cell projects and provided that, upon a breach of such exclusivity provision, Borrower would pay to Lender a cash amount equal to \$650,000 (the “Liquidated Damages Amount”).

The initial drawdown under the Facility, paid at closing on December 21, 2018, was \$10,000,000 as funding for the Company’s Bolthouse Farms 5.0 MW project in California. Pursuant to the terms of the Loan Agreement, Lender had an optional call right which, if exercised, was required to be noticed during the ten day period beginning on June 20, 2019 and ending on (and including) June 30, 2019. If Lender had delivered such notice, all of the Working Capital Loans (as described in the Loan Agreement) (currently in an amount equal to \$10,000,000), together with all accrued and unpaid interest thereon, would be due and payable in their entirety, without penalty or premium, prior to September 30, 2019.

On June 28, 2019, Borrower, Lender, and various project company guarantors entered into the First Amendment to the Loan Agreement (the “Loan Agreement Amendment”). Under the Loan Agreement Amendment, the optional call right (described above and in the original Loan Agreement) has been modified to give Lender the right to issue a notice to Borrower that Lender is terminating the Commitment and that all Working Capital Loans, together with all accrued and unpaid interest thereon, are due and payable in their entirety, without penalty or premium on September 30, 2019. Such notice shall be issued by Lender, if at all, during the ten day period beginning on August 1, 2019 and ending on (and including) August 11, 2019. Concurrently with the execution of the Loan Agreement Amendment, the Company, Borrower and Lender entered into the First Amendment to the Right to Finance Agreement, which provides that, if Lender exercises its right to terminate the Commitment and require repayment of the Working Capital Loans, the Right to Finance Agreement (as amended) will terminate as of August 11, 2019. In addition, in the First Amendment to the Right to Finance Agreement, the provision requiring the payment of the Liquidated Damages Amount (as described above) was deleted in its entirety.

A copy of the Loan Agreement Amendment is filed herewith as Exhibit 10.1 and is incorporated herein by reference. The foregoing description of the material terms of the Loan Agreement Amendment is qualified in its entirety by reference to Exhibit 10.1. A copy of the First Amendment to the Right to Finance Agreement is filed herewith as Exhibit 10.2 and is incorporated herein by reference. The foregoing description of the material terms of the First Amendment to the Right to Finance Agreement is qualified in its entirety by reference to Exhibit 10.2.

Item 9.01. Financial Statements and Exhibits.

- (a) Not applicable.
- (b) Not applicable.
- (c) Not applicable.
- (d) Exhibits. The following exhibits are being furnished herewith.

| Exhibit No. | Description |
|-------------|--|
| 10.1 | First Amendment to Construction Loan Agreement dated as of June 28, 2019 by and among FuelCell Energy Finance II, LLC and Generate Lending, LLC. |
| 10.2 | First Amendment to Right to Finance Agreement dated as of June 28, 2019 by and among FuelCell Energy, Inc., FuelCell Energy Finance II, LLC and Generate Lending, LLC. |

SIGNATURES

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

FUELCELL ENERGY, INC.

Date: July 3, 2019

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

FIRST AMENDMENT TO CONSTRUCTION LOAN AGREEMENT

THIS FIRST AMENDMENT TO CONSTRUCTION LOAN AGREEMENT (this “Amendment”) is dated as of June 28, 2019, by and among FUELCELL ENERGY FINANCE II, LLC, a Connecticut limited liability company (“Borrower”), BAKERSFIELD FUEL CELL 1, LLC, a Delaware limited liability company (“Bakersfield”), BRT FUEL CELL, LLC, a New York limited liability company (“BRT”), CR FUEL CELL, LLC, a New York limited liability company (“CR”), YAPHANK FUEL CELL PARK, LLC, a New York limited liability company (“Yaphank”), HOMESTEAD FUEL CELL 1, LLC, a Connecticut limited liability company (“Homestead”), DERBY FUEL CELL, LLC, a Connecticut limited liability company (“Derby”), and collectively with Bakersfield, BRT, CR, Yaphank and Homestead, each, an “Initial Project Company Guarantor”, and together, the “Initial Project Company Guarantors”), and GENERATE LENDING, LLC, a Delaware limited liability company (the “Lender”).

WHEREAS, the Borrower, the Initial Project Company Guarantors and the Lender are parties to a Construction Loan Agreement dated as of December 21, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Loan Agreement”), pursuant to which the Lender has made a construction loan facility available to the Borrower; and

WHEREAS, the Borrower and the Lender have agreed to modify certain provisions of the Loan Agreement as more particularly set forth in this Amendment.

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 to Loan Agreement. Each of the parties hereto hereby agrees that, on and as of the date of this Amendment:

(a) Clause (i) of Section 2.3 of the Loan Agreement is hereby amended by deleting such clause in its entirety and substituting in lieu thereof the following new clause (i) to read in its entirety as follows:

“(i) The Lender may, in its sole discretion, issue a notice to Borrower that Lender is terminating the Commitment, and that all Working Capital Loans shall be due and payable on September 30, 2019; provided that such notice shall be issued by the Lender if at all, during the ten (10) day period beginning on August 1, 2019 and ending on (and including) August 11, 2019, and such notice may be in the form of an e-mail message or other memorandum. If the Lender delivers such notice, all of the Working Capital Loans, together with all accrued and unpaid interest thereon, shall be due and payable in its entirety, without penalty or premium, on September 30, 2019. If the Lender delivers such notice, the Borrower may prepay all then outstanding Working Capital Loans at any time prior to September 30, 2019, without penalty or premium. The obligation of the Borrower to repay the Working Capital Loans and all accrued and unpaid interest thereon as contemplated by this Section 2.3(i) shall be guaranteed by the Parent pursuant to the Parent Guaranty. In the event that Lender issues the foregoing notice, from and after such date, Lender shall not be entitled to any Disposition Fee under Section 2.3 (c) or have any rights under Section 2.3(d) with respect to any Disposition or Refinancing that occurs after such date; provided, however, the Lender shall be entitled to a Disposition Fee on any Disposition of the Bakersfield Project, regardless of when such Disposition occurs.”

(b) Clause (j) of Section 2.3 of the Loan Agreement is hereby amended by deleting such clause in its entirety and substituting in lieu thereof the following new clause (j) to read in its entirety as follows:

“(j) So long as no Project Event of Default or Facility Event of Default then exists, if an Initial Project is determined in accordance to Section 2.1(b) to not constitute an Approved Project, at any time thereafter upon Borrower’s written notice to Lender, and at Borrower’s sole cost and expense, the Initial Project Company Guarantor that owns such Initial Project shall be released from all of its obligations as a Loan Party under this Agreement and the other Loan Documents, including without limitation its guaranty of the Obligations pursuant to Section 10 of this Agreement, and the Lender shall release its security interest in the assets and Equity Interests of such Initial Project Company Guarantor. Thereafter, Borrower shall promptly transfer the Equity Interests of such Initial Project Company Guarantor to an Affiliate so that such Initial Project Company Guarantor is no longer a Subsidiary of Borrower. Notwithstanding the foregoing, if the Lender delivers to the Borrower a notice that it is exercising its rights to cause the Loans to become due and payable on September 30, 2019 as specified in Section 2.1(i), then regardless of whether any Initial Project is determined in accordance with Section 2.1(b) to constitute an Approved Project, in no event shall such Initial Project Company Guarantor be released from any of its obligations as a Loan Party under this Agreement and the other Loan Documents, including without limitation its guaranty of the Obligations pursuant to Section 10 of this Agreement.”

3. Conditions to Effectiveness. This Amendment shall become effective the subject to the fulfillment of the condition precedent that the Lender shall have received the following documents, each duly executed by the parties thereto and delivered to the Lender:

- (i) this Amendment;
- (ii) the Acknowledgement and Agreement of the Parent; and
- (iii) the First Amendment to Right to Finance Agreement, executed by the Borrower, the Parent and the Lender.

4. Post-Closing Covenant. Within five (5) days of the date hereof, Borrower agrees to deliver to Lender a duly executed supplement to the Security Agreement, in the form of Annex A attached thereto, together with any schedules required to be delivered thereby.

5. Loan Party Representations and Warranties.

(a) Borrower and each Initial Project Company Guarantor hereby (i) confirms that all of the representations and warranties set forth in the Loan Agreement and the other Loan Documents are true and correct with respect to Borrower and each Initial Project Company Guarantor as of the date hereof (except insofar as such representations and warranties relate expressly to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date), (ii) covenants to perform its obligations under the Loan Agreement and other Loan Documents (including, but not limited to, this Amendment), (iii) specifically represents and warrants to Lender that it has good and marketable title to all of its respective Collateral, free and clear of any lien or security interest in favor of any other person or entity, other than Permitted Encumbrances, (iv) represents and warrants that the execution, delivery and performance of this Amendment have been authorized by all requisite limited liability company action on the part of each of Borrower and each Initial Project Company Guarantor and will not violate the certificate of formation, operating agreement, or other

applicable organization or governing documents of Borrower or such Initial Project Company Guarantor, as applicable, and (v) represents and warrants that this Amendment constitutes the legal, valid and binding obligation of Borrower and each Initial Project Company Guarantor , enforceable against Borrower and each Initial Project Company Guarantor in accordance with its terms except as such enforceability may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

(b) The Borrower and each Initial Project Company Guarantors hereby represent and warrant that no Facility Event of Default, Facility Default, Project Company Event of Default or Project Company Default has occurred and is continuing under the Loan Agreement.

(c) The Borrower and each Initial Project Company Guarantor hereby represent and warrant that attached hereto as Schedule 1 is a true, correct and complete list of the assets owned as of the date hereof by (i) Borrower and (ii) each Initial Project Company Guarantor.

6. Acknowledgement of Outstanding Obligations . Borrower acknowledges and agrees that, as of the date of this Amendment, the aggregate principal amount of all Working Capital Loans is \$10,000,000.00. Borrower acknowledges and agrees that all such principal and accrued interest thereon is due and payable without offset or defense of any kind or nature.

7. Loan Party Assets . Each of the Borrower and the Initial Project Company Guarantors represents and warrants that (i) attached hereto as Exhibit A is a true, correct and complete list of the assets of each of the Borrower and the Initial Project Company Guarantors, including the estimated value thereof, as of the date hereof, and (ii) the applicable Borrower or Initial Project Company Guarantor has good and valid title to such assets, free and clear of claims of any other Person, other than the Lender.

8. No Other Modifications; Reaffirmation by the Borrower . Except as expressly modified hereby, the terms of the Loan Agreement and each other Loan Document (and all covenants, conditions and agreements therein) shall remain in full force and effect in all respects, and are hereby ratified and confirmed in all respects by Borrower and each Initial Project Company Guarantor. Each of the Borrower and each Initial Project Company Guarantor hereby covenants and agrees to comply with all of the terms, covenants and conditions of the Loan Agreement (as amended hereby) and the Loan Documents to which it is a party, notwithstanding any prior course of conduct, waivers, releases or other actions or inactions on Lender's part which might otherwise constitute or be construed as a waiver of or agreement to such terms, covenants and conditions, or otherwise.

9. Release . BORROWER AND EACH INITIAL PROJECT COMPANY GUARANTOR HEREBY ACKNOWLEDGES THAT BORROWER'S PAYMENT OBLIGATIONS UNDER THE LOAN DOCUMENTS ARE ABSOLUTE AND UNCONDITIONAL WITHOUT ANY RIGHT OF RESCISSION, SETOFF, COUNTERCLAIM, DEFENSE, OFFSET, RECOUPMENT, CROSS-COMPLAINT, CLAIM OR DEMAND OF ANY KIND OR NATURE WHATSOEVER THAT CAN BE ASSERTED TO REDUCE OR ELIMINATE ALL OR ANY PART OF ITS LIABILITY TO REPAY THE OBLIGATIONS OR TO SEEK AFFIRMATIVE RELIEF OR DAMAGES OF ANY KIND OR NATURE FROM LENDER. BASED UPON THE FACTS KNOWN TO BORROWER AND EACH INITIAL PROJECT COMPANY GUARANTOR AS OF THE EFFECTIVE DATE, BORROWER AND EACH INITIAL PROJECT COMPANY GUARANTOR HEREBY VOLUNTARILY AND KNOWINGLY RELEASES AND FOREVER DISCHARGES LENDER AND ITS PREDECESSORS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES"), FROM ALL POSSIBLE CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, DAMAGES, COSTS, EXPENSES, AND LIABILITIES WHATSOEVER, KNOWN OR UNKNOWN, ANTICIPATED

OR UNANTICIPATED, SUSPECTED OR UNSUSPECTED, FIXED, CONTINGENT, OR CONDITIONAL, AT LAW OR IN EQUITY, WHICH BORROWER OR ANY INITIAL PROJECT COMPANY GUARANTOR MAY NOW OR HEREAFTER HAVE AGAINST ANY OF THE RELEASED PARTIES, IF ANY, AND IRRESPECTIVE OF WHETHER ANY SUCH CLAIMS ARISE OUT OF CONTRACT, TORT, VIOLATION OF LAW OR REGULATIONS, OR OTHERWISE, AND ARISING FROM THE LOAN OR ANY OTHER OBLIGATIONS OWING TO LENDER, INCLUDING, WITHOUT LIMITATION, ANY CONTRACTING FOR, CHARGING, TAKING, RESERVING, COLLECTING OR RECEIVING INTEREST IN EXCESS OF THE HIGHEST LAWFUL RATE APPLICABLE, THE EXERCISE OF ANY RIGHTS AND REMEDIES UNDER THE CREDIT AGREEMENT OR OTHER LOAN DOCUMENTS, AND THE NEGOTIATION AND EXECUTION OF THIS A MEND MENT.

10. 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.

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

12. 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.

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

14. Final Agreements. This Amendment represents the final agreement of the Borrower, the Initial Project Company Guarantors and the 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 the Borrower, the Initial Project Company Guarantors and the Lender.

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

IN WITNESS WHEREOF, the Borrower, the Initial Project Company Guarantors and the 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:

FUELCELL ENERGY FINANCE II, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Executive Vice President & Chief
Financial Officer

[*Signatures continue on following page.*]

INITIAL PROJECT COMPANY GUARANTORS:

BAKERSFIELD FUEL CELL 1, LLC

By: FuelCell Energy Finance II, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Executive Vice President & Chief
Financial Officer

BRT FUEL CELL, LLC

By: FuelCell Energy Finance II, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Executive Vice President & Chief
Financial Officer

CR FUEL CELL, LLC

By: FuelCell Energy Finance II, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Executive Vice President & Chief
Financial Officer

[Signatures continue on following page.]

YAPHANK FUEL CELL PARK, LLC

By: FuelCell Energy Finance II, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Executive Vice President & Chief
Financial Officer

HOMESTEAD FUEL CELL 1, LLC

By: FuelCell Energy Finance II, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Executive Vice President & Chief
Financial Officer

DERBY FUEL CELL, LLC

By: FuelCell Energy Finance II, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Executive Vice President & Chief
Financial Officer

[Signatures continue on following page.]

LENDER:

GENERATE LENDING, LLC ,
a Delaware limited liability company

By: /s/ Matan Friedman

Name: Matan Friedman

Title: Manager

FIRST AMENDMENT TO LOAN AGREEMENT
SIGNATURE PAGE

**ACKNOWLEDGMENT AND AGREEMENT
OF
PARENT**

June 28, 2019

Reference is made to (i) that certain First Amendment to Construction Loan Agreement, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the “Amendment”), by and among FUELCELL ENERGY FINANCE II, LLC, a Connecticut limited liability company (“Borrower”), BAKERSFIELD FUEL CELL 1, LLC, a Delaware limited liability company (“Bakersfield”), BRT Fuel Cell, LLC, a New York limited liability company (“BRT”), CR FUEL CELL, LLC, a New York limited liability company (“CR”), Yaphank Fuel Cell Park, LLC, a New York limited liability company (“Yaphank”), Homestead Fuel Cell 1, LLC, a Connecticut limited liability company (“Homestead”), DERBY FUEL CELL, LLC, a Connecticut limited liability company (“Derby,” and collectively with Bakersfield, BRT, CR, Yaphank and Homestead, each, an “Initial Project Company Guarantor”, and together, the “Initial Project Company Guarantors”), and GENERATE LENDING, LLC, a Delaware limited liability company (the “Lender”); (ii) that certain Construction Loan Agreement, dated as of December 21, 2018 (as amended, restated, supplemented or otherwise modified from time to time, the “Loan Agreement”), by and among the Borrower, the Initial Project Company Guarantors and the Lender; and (iii) that certain Guaranty Agreement, dated as of December 21, 2018 (as amended, restated, supplemented or otherwise modified from time to time, the “Parent Guaranty”), by FUELCELL ENERGY, INC., a Delaware corporation (the “Parent”). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to such terms in the Loan Agreement.

The Parent, a guarantor of the full and prompt payment of all of the indebtedness, obligations and liabilities of the Borrower to the Lender to pursuant the Parent Guaranty, hereby:

(a) acknowledges receipt of a copy of the Amendment, which amends the Loan Agreement to, among other things, provide for a new period during which the Lender may exercise its option to terminate its Commitment under the Loan Agreement and cause all Working Capital Loans to become due and payable on September 30, 2019;

(b) acknowledges and agrees that all obligations of the Borrower to the Lender under the Loan Agreement, as amended by the Amendment, and the other Loan Documents, are in each case guaranteed by the Parent pursuant to the Parent Guaranty, and reaffirms all of its obligations under the Parent Guaranty;

(c) acknowledges and agrees that the Parent Guaranty, and the Parent’s obligations thereunder, remain in full force and effect, without release, diminution or impairment, notwithstanding the execution and delivery of the Amendment or the modifications to the Loan Agreement set forth therein; and

(d) represents, warrants, acknowledges and agrees to and with Lender that (i) the Parent does not hold or claim any right of action, claim, cause of action or damages, either at law or in equity, against Lender which arises from, may arise from, allegedly arise from, are based upon or are related in any manner whatsoever to the Loan Agreement, the Amendment, any other Loan Document or any other related agreement, document or instrument, which are based upon acts or omissions of Lender in connection therewith and (ii) the indebtedness, obligations and liabilities owing by the Parent Guarantor pursuant to the Parent Guaranty are absolutely owed to Lender, without offset, deduction or counterclaim.

[*Remainder of page intentionally blank; signature page follows.*]

IN WITNESS WHEREOF, the undersigned has executed this Acknowledgment and Agreement under seal as of the date first written above.

PARENT

FUELCELL ENERGY, INC.

By: /s/ Michael S. Bishop (SEAL)
Name: Michael S. Bishop
Title: Executive Vice President and Chief Financial Officer

FIRST AMENDMENT TO LOAN AGREEMENT
(ACKNOWLEDGEMENT AND AGREEMENT OF PARENT)
SIGNATURE PAGE

SCHEDULE 1

List of Assets of Borrower and Each Project Company Guarantor

CURRENT INFORMATION

1. Tangible Personal Property

Inventory and Equipment. Set forth below are all the locations where Holdco and each Loan Party currently maintains inventory and equipment of Holdco or such Loan Party, as applicable (whether or not in the possession of Holdco or such Loan Party):

| Name of Holdco/Loan Party | Address/City/State/Province/Zip Code/Postal Code | Estimated Value of Inventory and Equipment |
|-------------------------------------|---|--|
| Bakersfield Fuel Cell 1, LLC | ModulesLocationCxxxx-136260 N. Smith Ave Corona, CA 92880 Cxxxx-137260 N. Smith Ave Corona, CA 92880 Cxxxx-138264 Chase River Rd., Waterbury, CT 06704 Cxxxx-139264 Chase River Rd., Waterbury, CT 06704 BOPLocationMxxxQ: Skid #1 260 N. Smith Ave, Corona, CA 82880MxxxQ: Skid #21881 Route 461881 Route 46 Ledgewood, NJ 07852MxxxQ: Skid #2a1881 Route 461881 Route 46 Ledgewood, NJ 07852MxxxQ: Skid #3/Crates1881 Route 461881 Route 46 Ledgewood, NJ 07852Desulfurizer Vessels6900 McHard Road (FM 2234)Houston, TX 77053EBOP Leader300 Chase River Rd, Waterbury, CT 06704EBOP Follower264 Chase River Rd, Waterbury, CT 06704MxxxQ: Skid #1 260 N. Smith Ave., Corona, CA 92880MxxxQ: Skid #21881 Route 461881 Route 46 Ledgewood, NJ 07852MxxxQ: Skid #2a1881 Route 461881 Route 46 Ledgewood, NJ 07852MxxxQ: Skid #3/Crates1881 Route 461881 Route 46 Ledgewood, NJ 07852Desulfurizer VesselsHouston, TX (Ward Tank)EBOP Leader6900 McHard Road (FM 2234)Waterbury, CT 77053EBOP Follower6900 McHard Road (FM 2234)Waterbury, CT 77053 | \$14.1M |
| BRT Fuel Cell, LLC | N/A | N/A |
| Yaphank Fuel Cell Park, LLC | Module – Cxxxx-148 3 Great Pasture Road, Danbury, CT 06810 Module – Cxxxx-144 539 Technology Park Dr. Torrington, CT 06790 | \$4.3M |
| CR Fuel Cell, LLC | BOPMxxxQ: Skid 2 & 2a OnlyMxxxQ: Skid #1 MxxxQ: Skid #2MxxxQ: Skid #2aMxxxQ: Skid #3/CratesMxxxQ: Skid #1 MxxxQ: Skid #2MxxxQ: Skid #2aMxxxQ: Skid #3/Crates 1578 Sussex Turnpike, Randolph, NJ 0768 | \$4.0M |

** On June 7, 2019, Lender received an e-mail attaching a PDF, which included the project asset information identified above, along with pictures of such collateral. In addition, the information on collateral identified above was provided to Lender identifying project values.

2. Real Estate Related UCC Collateral – Owned or Leased Real Property.

Set forth below are all the locations where Holdco or any Loan Party owns or leases any real property or otherwise conducts business:

| Name of Holdco/Loan Party | Address/City/State/Province/Zip Code/Postal Code | Owned or Leased |
|-------------------------------|--|-----------------|
| Bakersfield Fuel Cell, I LLC. | 7200 East Brundage Lane, Bakersfield, CA | License |
| Derby Fuel Cell, LLC | 200 Roosevelt Drive Derby, CT 06418 | Ground Lease |

FIRST AMENDMENT TO RIGHT TO FINANCE AGREEMENT

THIS FIRST AMENDMENT TO RIGHT TO FINANCE AGREEMENT (this "Amendment") is dated as of June 28, 2019 (the "Effective Date"), by and among FUELCELL ENERGY, INC., a Delaware corporation (the "Parent"), FUELCELL ENERGY FINANCE 11, LLC, a Connecticut limited liability company, a wholly-owned subsidiary of the Parent (the "Borrower"), and GENERATE LENDING, LLC, a Delaware limited liability company (the "Lender").

WHEREAS, the Borrower, the Parent and the Lender are parties to a Right to Finance Agreement dated December 21, 2018, attached hereto as Exhibit A (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Right to Finance"); and

WHEREAS, the Borrower, the Initial Project Company Guarantors and the Lender are parties to a Construction Loan Agreement dated as of December 21, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), pursuant to which the Lender has made a construction loan facility available to the Borrower; and

WHEREAS, concurrently with the execution of this Amendment, the Borrower, the Initial Project Company Guarantors, and the Lender are entering into certain First Amendment to Construction Loan Agreement (the "First Amendment"), which First Amendment includes an acknowledgement and agreement of the Parent; and

WHEREAS, the Borrower, the Parent and the Lender have agreed to modify certain provisions of the Right to Finance, subject to the terms and conditions set forth herein.

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. Capitalized terms used in this Amendment which are not otherwise defined herein shall have the meanings assigned thereto in the Right to Finance.

2. Amendment of the Right to Finance. Each of the parties hereto hereby agrees that, on and as of the Effective Date:

(a) The last sentence of Paragraph 6 of the Right to Finance is hereby amended by deleting such sentence in its entirety and substituting in lieu thereof the following new sentence to read in its entirety as follows:

"In addition, if the Lender exercises its right to terminate the Commitment and require repayment of the Working Capital Loans pursuant to Section 2.3(i) of the Loan Agreement, this Agreement shall terminate as of August 11, 2019."

(b) Paragraph 9 of the Right to Finance is hereby amended by deleting such section in its entirety and substituting in lieu thereof the following new paragraph 9 to read in its entirety as follows:

"9. This Agreement shall be binding upon and inure to the benefit of the Parent, the Borrower and the Lender."

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

4. 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.

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

6. Final Agreements. This Amendment represents the final agreement of the Borrower, the Parent and the 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 the Borrower, the Parent and the Lender.

[Remainder of page intentionally blank; signature page follows.]

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

BUYER:

FUELCELL ENERGY FINANCE II, LLC

By: FuelCell Energy Finance, LLC.
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Executive Vice President & Chief Financial Officer

PARENT:

FUELCELL ENERGY, INC.

By: /s/ Michael S. Bishop (SEAL)
Name: Michael S. Bishop
Title: Executive Vice President & Chief Financial Officer

LENDER:

GENERATE LENDING, LLC.
A Delaware limited liability company

By: /s/ Matan Friedman
Name: Matan Friedman
Title: Manager

Exhibit A

Right to Finance Agreement

[See attached.]

**GENERATE LENDING, LLC
555 DE HARO STREET, SUITE 300
SAN FRANCISCO, CA 94107**

December 21, 2018

FuelCell Energy, Inc.
3 Great Pasture Rd.
Danbury, CT 06810
Attention: Michael Bishop

Dear Mr. Bishop:

Re: RIGHT TO FINANCE AGREEMENT: REGARDING REVOLVING CONSTRUCTION LOAN AGREEMENT (THE “LOAN AGREEMENT”) DATED AS OF DECEMBER 21, 2018 BY AND AMONG FUELCELL ENERGY FINANCE II, LLC (“BORROWER”), CERTAIN OF ITS SUBSIDIARIES AND GENERATE LENDING, LLC (“LENDER”).

In connection with Lender and Borrower entering into the Loan Agreement, Lender, Borrower and FuelCell Energy, Inc. (the “Parent”), hereby agree to the following (this “Agreement”)

1. All capitalized terms used herein and not otherwise defined herein shall have the meaning set forth in the Loan Agreement.
 2. During the Term of this Agreement (as defined in Section 8 below), Parent agrees that (i) Parent will not, and will not permit any Subsidiary to, enter into, offer, solicit or negotiate to enter into, any agreements, arrangements, term sheets or commitments with any third party to obtaining debt financing (“Third Party Construction Financing”) for the development, construction, installation, commissioning or startup of an Available Project; or (ii) consummate any Third Party Construction Financing for an Available Project, except as permitted pursuant to this Agreement. Parent will not and will not permit any Subsidiary to respond to any unsolicited third-party proposal or offer for Third Party Construction Financing by any person or entity, other than to inform such person or entity that an exclusive right to finance exists with respect to such Available Project, except as permitted pursuant to this Agreement. For the avoidance of doubt, a Third Party Construction Financing shall not mean any debt financing in which Parent is the primary borrower and which is secured by all or substantially all of Parent’s assets (a “Parent Corporate Facility”) and nothing herein shall be construed to limit any rights of Parent to consummate a Parent Corporate Facility.
 3. In the event that Borrower has provided a Project Approval Certification and all related information required to be delivered by Borrower pursuant to Section 2.1(b) of the Loan Agreement and requested that (i) Lender determine that such Available Project is an Approved Project, and (ii) Lender provide a Working Capital Loan with regard to such Available Project in accordance with the terms and conditions of the Loan Agreement, and Lender has not provided written notice to Borrower within the eighteen (18) Business Day period referenced in Section 2.1(b) of the Loan Agreement that Lender has determined that such Available Project constitutes an Approved Project, the provisions of Section 2 of this Agreement shall no longer apply to such Available Project and Parent and Borrower shall not be subject to any restrictions regarding obtaining Third Party Construction Financing for such Available
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Project. Notwithstanding the foregoing, in the event that Lender does not designate an Available Project as an Approved Project during the referenced eighteen (18) Business Day period in accordance with this Section 3, if at any time thereafter but prior to Parent's or Borrower's closing on a Third Party Construction Financing for such Available Project, a "Material Change" shall occur with respect to such Available Project, then Parent shall be required to resubmit such Available Project to Lender in accordance with the provisions of Section 2 prior to consummating any Third Party Construction Financing. For purposes of this Agreement, a "Material Change" shall mean any of the following: (i) a material increase in the pricing of the Revenue Contract for such Available Project; (ii) an increase in the term of the Revenue Contract for such Available Project; (iii) a material improvement in the credit rating of the Customer for such Available Project; (iv) a change in the identity of the Customer for such Available Project; (v) a material decrease in the pricing of the EPC Contract or the O&M Agreement for such Available Project or (vi) a material change in the terms or structure of the Revenue Contract, EPC Contract or O&M Agreement.

4. In the event that Lender approves an Available Project as an Approved Project pursuant to Section 2.1 of the Loan Agreement but does not provide a Working Capital Loan to such Approved Project within ninety (90) days after Notice to Proceed has been delivered to Lender for such Approved Project as a result of either: (i) Lender's breach of its obligations under the Loan Agreement or (ii) the failure of any of the conditions set forth in Section 5.2 of the Loan Agreement to be satisfied despite Borrower's reasonable efforts; then, in such event, the provisions of Section 2 of this Agreement shall no longer apply to such Approved Project and Parent and Borrower shall be relieved of any restrictions regarding obtaining Third Party Construction Financing for such Approved Project.
 5. In the event that the Borrower has provided a Project Approval Certification and all related information required to be delivered by Borrower pursuant to Section 2.1 of the Loan Agreement and the amount of the Working Capital Loans to be requested for such Available Project combined with all Working Capital Loans then outstanding would, at any point, exceed \$100 million, then, within thirty (30) days of Lender's receipt of such written notice from Borrower, (i) Lender shall obtain approval of its board of directors to lift any restrictions regarding extending Loans in excess of \$100 million and provide Borrower with a copy of any such Board approval; and (ii) Lender shall provide substantiation to Borrower showing the Lender has sufficient funds available (either through existing capital commitments, cash on hand or existing credit lines) to make such Working Capital Loans to Borrower. In the event that Lender does not satisfy either of the requirements in clauses (i) or (ii) within such thirty (30) day period, then this Agreement shall terminate at such time and neither Parent or Borrower shall be subject to any further restrictions or obligations set forth herein.
 6. In the event that Lender, during the Term: (i) fails to approve as Approved Projects three (3) Available Projects submitted by Borrower to Lender pursuant to Section 2.1 of the Loan Agreement or, (ii) over any six (6) month period of time that commences on or after June 30, 2019, does not make at least one (1) disbursement of Working Capital Loans in respect of Approved Projects, then, in either event, this Agreement shall terminate at such time and neither Parent nor Borrower shall be subject to any further restrictions or obligations set forth herein. In addition, if the Lender exercises its right to terminate the Commitment and require repayment of the Working Capital Loans pursuant to Section 2.3(i) of the Loan Agreement, this Agreement shall terminate as of June 30, 2019.
 7. At any time prior to Borrower submitting any Available Project to Lender pursuant to Section 2.1 of the Loan Agreement, Borrower may, in its discretion, submit preliminary information to Lender regarding an Available Project in accordance with Schedule 1 attached to this Agreement ("Preliminary Project Presentation Information") and Lender, in good faith, shall review such Preliminary Project Presentation Information to determine whether such Available Project is likely to be an Approved Project. No later than ten (10) days after Borrower's submission of Preliminary Project Presentation
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Information to Lender, Lender shall, in good faith, provide adequate notice (a “ Preliminary Project Response ”) to Borrower whether or not Lender reasonably believes that such Available Project will ultimately be an Approved Project following a subsequent submission pursuant to Section 2.1 of the Loan Agreement. If Lender indicates it does not believe such Available Project will be an Approved Project, then the provisions of Section 2 of this Agreement shall no longer apply to such Available Project and Parent and Borrower shall not be subject to any restrictions regarding obtaining Third Party Construction Financing for such Available Project. Alternatively, if Lender’s Preliminary Project Response is that Lender reasonably believes that such Available Project will be an Approved Project, the provisions of Section 2 of this Agreement shall continue to apply to Parent and Borrower with respect to such Available Project and the final determination of whether such Available Project is an Approved Project will be made in accordance with the provisions of Section 2.1 (b) of the Loan Agreement; provided, however, that, to the extent that the Preliminary Project Presentation Information includes (i) a Credit File for the proposed Customer; (ii) a Revenue Contract with such proposed Customer; (iii) a proposed Construction Budget and Schedule; or (iv) a proposed Project Loan Disbursement Schedule, then by virtue of Lender’s Preliminary Project Response indicating that such Available Project will be an Approved Project, Lender will be deemed to have approved the foregoing items for purposes of Borrower’s subsequent submission of the Available Project to Lender under Section 2.1 of the Loan Agreement; provided that no material change to any such item shall have occurred since the Preliminary Project Presentation.

8. The term (“ Term ”) of this Agreement shall commence on the date hereof (the “ Effective Date ”) and, unless terminated sooner in accordance with the provisions of Sections 5 or 6 of this Agreement, shall remain in effect until the first to occur of: (i) the third (3rd) anniversary of the Effective Date and (ii) the termination of the Commitment pursuant to the Loan Agreement.
 9. This Agreement shall be binding upon and inure to the benefit of the Parent, the Borrower and the Lender. Lender agrees that, in the event that Borrower or Parent shall breach the provisions of Section 2 with respect to any Available Project and close on a Third Party Construction Financing for such Available Project in contravention of this Agreement, as Lender’s sole legal or equity remedy (including in lieu of the equitable remedies of restraint, injunction and specific performance), and as liquidated damages that all parties agree are fair, reasonable and adequate, Parent shall pay to Lender a cash amount equal to \$650,000 (the “ Liquidated Damages Amount ”), such amount to be paid no later than ten (10) Business Days after closing has occurred on the Third Party Construction Financing for such Available Project in breach of Section 2 of this Agreement. At such time as Parent has paid the Liquidated Damages Amount to Lender, this Agreement shall terminate and neither Parent or Borrower shall be subject to any further restrictions or obligations set forth herein.
 10. This Agreement may be amended or otherwise modified only by a written instrument executed by the parties hereto which (i) specifically refers to the provision of this Agreement to be amended, and (ii) is signed by the parties hereto. This Agreement may be waived but only by a written instrument executed by the party providing the waiver which states that it constitutes a waiver hereunder and specifies the provision(s) being waived. A waiver by one party of any right or benefit provided in this Agreement does not infer or constitute a waiver of any other right or benefit in this Agreement.
 11. Neither party shall transfer or assign any of its rights or obligations hereunder without the prior written consent of the other party and any transfer of obligations hereunder without the prior written consent of both parties shall be void and of no effect. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. This Agreement is not intended and shall not be construed to create any rights in or to enforceable by any other person other than the parties to this Agreement.
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12. Except for the provisions of Section 9, the parties agree that each of the clauses and sub-clauses of this Agreement shall be separate and several and enforceable as such. The complete or partial invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provision hereof.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION. EACH PARTY AGREES THAT ANY AND ALL ACTIONS AND PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS SHALL BE COMMENCED AND PROSECUTED SOLELY AND EXCLUSIVELY IN ANY FEDERAL OR STATE COURT IN THE CITY AND STATE OF NEW YORK, AND ANY APPELLATE COURTS THEREFROM (“NEW YORK COURTS”), AND EACH PARTY IRREVOCABLY WAIVES ANY RIGHT TO OBJECT TO SUCH VENUE. EACH PARTY IRREVOCABLY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE NEW YORK COURTS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING. EACH PARTY CONSENTS TO SERVICE OF PROCESS UPON IT WITH RESPECT TO ANY SUCH ACTION OR PROCEEDING BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, AND BY ANY OTHER MEANS PERMITTED BY APPLICABLE LAWS. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE SUCH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT THERETO. THIS AGREEMENT CONSITUTES A LOAN DOCUMENT.

Any communications between the parties hereto or regular notices provided herein to be given shall be given to the following addresses:

To Lender:

Generate Capital, Inc.
555 DeHaro Street
Suite 300
San Francisco, CA 94107

Email: notices@generatecapital.com

Attention: Notices

To Parent or Borrower:

FuelCell Energy, Inc.
3 Great Pasture Road Danbury, CT 06810

Email:

Attention: Legal Department

[Remainder of page intentionally blank; signature page follows.]

Please indicate your agreement to the terms set forth above by executing this Agreement where indicated below and returning a signed copy hereof to Generate, at which point this Agreement will constitute a binding agreement of the parties.

Very Truly Yours,

GENERATE LENDING, LLC.

By: /s/ Matan Friedman

Name: Matan Friedman

Title: Manager

FUELCELL ENERGY FINANCE II, LLC

By: FuelCell Energy Finance, LLC Its:

Its: Sole Member

By: FuelCell Energy, Inc.

Its: Sole Member

By: /s/ Michael S. Bishop

Name: Michael S. Bishop

Title: Senior Vice President & Chief
Financial Officer

FUELCELL ENERGY, INC.

By: /s/ Michael S. Bishop

Name: Michael S. Bishop

Title: Senior Vice President & Chief
Financial Officer