

FUELCELL ENERGY INC
Form PRE 14A
October 27, 2017
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 14A
Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934 (Amendment No.)

Filed by the Registrant Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for use of the Commission only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to ss.240.14a-12

FuelCell Energy, Inc.
(Name of Registrant as Specified In Its Charter)
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.
 - (1)
Title of each class of securities to which transaction applies:
 - (2)
Aggregate number of securities to which transaction applies:
 - (3)
Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
 - (4)
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Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1)

Amount Previously Paid:

(2)

Form, Schedule or Registration Statement No.:

(3)

Filing Party:

(4)

Date Filed:

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Notice of Special Meeting &
Proxy Statement
December 14, 2017 – New York, NY

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“ Your vote is very important. We encourage you to vote your shares by proxy even if you do not plan to attend the meeting. ”

Dear Fellow FuelCell Energy Shareholder:

We are pleased to invite you to attend a special meeting of shareholders (the “Special Meeting”) to be held on Thursday, December 14, 2017 at 4:00 PM at the offices of Foley & Lardner LLP, 90 Park Avenue, 35th Floor, New York, New York 10016.

We are holding the Special Meeting for the following purposes, which are described in more detail in the accompanying proxy statement:

1.

To approve, in accordance with NASDAQ Marketplace Rule 5635(d), the issuance of shares of FuelCell Energy, Inc.’s common stock exceeding 19.9% of the number of shares outstanding on September 5, 2017, upon the conversion and/or redemption of the Series C Convertible Preferred Stock issued in an underwritten offering in September 2017 (the “NASDAQ Marketplace Rule Proposal”);

2.

To approve the amendment of the FuelCell Energy, Inc. Certificate of Incorporation, as amended, to increase the authorized common stock of FuelCell Energy, Inc. from 125,000,000 shares to 225,000,000 shares (the “Increase Authorized Shares Proposal”); and

3.

To approve an adjournment of the Special Meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the NASDAQ Marketplace Rule Proposal (the “Adjournment Proposal”).

Our board of directors has fixed November 1, 2017 as the record date for the determination of shareholders entitled to notice of, and to vote at, the Special Meeting.

On behalf of our board of directors, I thank you for your ongoing interest and investment in FuelCell Energy, Inc. We are committed to acting in the best long-term interests of our shareholders.

Your vote is very important. We encourage you to vote your shares by proxy even if you do not plan to attend the Special Meeting. Our board of directors recommends the approval of the proposals being presented at the Special Meeting as being in the best interest of our Company and our shareholders.

Sincerely,

John A. Rolls
Chairman of the Board
November [], 2017

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Notice of
Special Meeting
of Shareholders

Thursday, December 14, 2017

4:00 p.m. Eastern Standard Time

The Offices of Foley & Lardner LLP, 90 Park Avenue, New York, NY 10016

| ITEMS OF BUSINESS

1.

To approve, in accordance with NASDAQ Marketplace Rule 5635(d), the issuance of shares of FuelCell Energy, Inc.'s common stock exceeding 19.9% of the number of shares outstanding on September 5, 2017, upon the conversion and/or redemption of the Series C Convertible Preferred Stock issued in an underwritten offering in September 2017 (the "NASDAQ Marketplace Rule Proposal");

2.

To approve the amendment of the FuelCell Energy, Inc. Certificate of Incorporation, as amended, to increase the authorized common stock of FuelCell Energy, Inc. from 125,000,000 shares to 225,000,000 shares (the "Increase Authorized Shares Proposal"); and

3.

To approve an adjournment of the Special Meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the NASDAQ Marketplace Rule Proposal (the "Adjournment Proposal").

| RECORD DATE

Holders of record of our common stock on November 1, 2017 are entitled to notice of, and to vote at, the Special Meeting; provided, however, that holders of shares of our common stock issued upon conversion or redemption of the Series C Convertible Preferred Stock prior to shareholder approval of the NASDAQ Marketplace Rule Proposal will not be permitted to vote such shares with respect to the NASDAQ Marketplace Rule Proposal.

| MATERIALS TO REVIEW

This booklet contains our Notice of Special Meeting and Proxy Statement which describe the business we will conduct at the Special Meeting.

| PROXY VOTING

It is important that your shares of common stock are represented and voted at the Special Meeting. Please vote your shares of common stock according to the instructions under "How to Vote" in the Proxy Summary.

| ADMISSION TO THE SPECIAL MEETING

To attend the Special Meeting, please follow the "Meeting Attendance" instructions in the Proxy Summary.

By Order of the Board of Directors,

Jennifer D. Arasimowicz

Corporate Secretary

November [], 2017

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Proxy Summary

This summary highlights selected information contained throughout this proxy statement. Please read the entire proxy statement before casting your vote.

Eligibility to Vote

Holders of record of our common stock at the close of business on November 1, 2017 are entitled to vote at the Special Meeting of Shareholders; provided, however, that holders of shares of our common stock issued upon conversion or redemption of the Series C Convertible Preferred Stock prior to shareholder approval of the NASDAQ Marketplace Rule Proposal will not be permitted to vote such shares with respect to the NASDAQ Marketplace Rule Proposal.

How to Vote

You may vote using any one of the following methods. In all cases, you should have your 16-Digit Control Number from your proxy card available, and follow the simple instructions. Voting will be accepted until 11:59 p.m. (Eastern Standard Time) on December 13, 2017:

Online at www.proxyvote.com

Online using your mobile device by scanning the QR Code

By telephone at 1-800-690-6903

By mail by voting, signing and timely mailing your Proxy Card

Meeting Information

Time and Date: Thursday, December 14, 2017 at 4:00 p.m. (Eastern Standard Time)

Place: The Offices of Foley & Lardner LLP, 90 Park Avenue, New York, NY 10016

Meeting Attendance

Meeting attendance requires advance registration. Please contact the office of the Corporate Secretary at corporatesecretary@fce.com to request an admission ticket. If you do not have an admission ticket, you must present proof of stock ownership in order to attend the meeting.

Company Profile

FuelCell Energy delivers proprietary power solutions that enable economic prosperity with the clean and affordable supply, recovery and storage of energy. SureSource™ power plants are generating ultra-clean, efficient and reliable power on three continents, affordably providing continuous distributed power generation to a variety of industries including utilities, commercial and municipal customers. The Company's power plants have generated billions of kilowatt hours of ultra-clean power using a wide variety of fuels including renewable biogas from wastewater treatment and food processing, as well as clean natural gas. For additional information, please visit www.fuelcellenergy.com and follow us on Twitter.

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Shareholder Voting Matters

	Management Recommendation	Page Reference (for more detail)
<u>1.</u> <u>To approve, in accordance with NASDAQ Marketplace Rule 5635(d), the issuance of shares of FuelCell Energy, Inc.’s common stock exceeding 19.9% of the number of shares outstanding on September 5, 2017, upon the conversion and/or redemption of the Series C Convertible Preferred Stock issued in an underwritten offering in September 2017 (the “NASDAQ Marketplace Rule Proposal”).</u>	<u>FOR</u>	<u>6</u>
<u>2.</u> <u>To approve the amendment of the FuelCell Energy, Inc. Certificate of Incorporation, as amended, to increase the authorized common stock of FuelCell Energy, Inc. from 125,000,000 shares to 225,000,000 shares (the “Increase Authorized Shares Proposal”).</u>	<u>FOR</u>	<u>8</u>
<u>3.</u> <u>To approve an adjournment of the Special Meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the NASDAQ Marketplace Rule Proposal (the “Adjournment Proposal”).</u>	<u>FOR</u>	<u>11</u>

PROXY STATEMENT

FuelCell Energy, Inc. (referred to in this Proxy Statement as “we,” “FuelCell,” “FuelCell Energy,” or the “Company”) is sending you this Proxy Statement in connection with the solicitation by our Board of Directors (the “Board”) of proxies to be voted at FuelCell’s Special Meeting of Shareholders (the “Special Meeting”) and at any adjournment thereof. The Special Meeting will be held at the offices of Foley & Lardner LLP, 90 Park Avenue, New York, NY 10016 on Thursday, December 14, 2017 at 4:00 p.m. Eastern Standard Time. The Company is a Delaware corporation. The address of the Company’s principal executive offices is FuelCell Energy, Inc., 3 Great Pasture Road, Danbury, CT 06810.

As of November 1, 2017, there were [] shares of common stock outstanding and entitled to vote on all matters at the Special Meeting. Holders of common stock outstanding at the close of business on the record date will be entitled to one vote for each share held by them on the record date; provided, however, that holders of shares of our common stock issued upon conversion or redemption of the Series C Convertible Preferred Stock prior to shareholder approval of the NASDAQ Marketplace Rule Proposal will not be permitted to vote such shares with respect to the NASDAQ

Marketplace Rule Proposal.

The approximate date on which this Proxy Statement and the accompanying proxy card are first being sent or given to shareholders is November [], 2017.

Important Notice Regarding the Availability of Proxy Materials for the Special Meeting of Shareholders to be Held on December 14, 2017: Pursuant to SEC rules, with respect to the Special Meeting, we have elected to utilize the “full set delivery” option of providing paper copies of all of our proxy materials by mail. The Notice of Special Meeting and Proxy Statement are also available at <http://investor.fce.com/Investors/default.aspx>.

QUESTIONS AND ANSWERS ABOUT THE DECEMBER 2017 SPECIAL MEETING OF SHAREHOLDERS

What is the purpose of the Special Meeting?

We are holding the Special Meeting for the following purposes, which are described in more detail below in this Proxy Statement:

(1)

To approve, in accordance with NASDAQ Marketplace Rule 5635(d), the issuance of shares of FuelCell Energy, Inc.’s common stock exceeding 19.9% of the number of shares outstanding on September 5, 2017, upon the conversion and/or redemption of the Series C Convertible Preferred Stock issued in an underwritten offering in September 2017 (the “NASDAQ Marketplace Rule Proposal”);

(2)

To approve the amendment of the FuelCell Energy, Inc. Certificate of Incorporation, as amended, to increase the authorized common stock of FuelCell Energy, Inc. from 125,000,000 shares to 225,000,000 (the “Increase Authorized Shares Proposal”); and

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(3)

To approve an adjournment of the Special Meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the NASDAQ Marketplace Rule Proposal (the “Adjournment Proposal”).

What is in this Proxy Statement?

This Proxy Statement describes the proposals on which we would like you, as a shareholder, to vote at the Special Meeting. It gives you information on the proposals, as well as other information about us, so that you can make an informed decision on whether or how to vote your stock.

Who is entitled to vote at the Special Meeting?

The Board has set the close of business on November 1, 2017 as the record date for the determination of shareholders of the Company’s common stock, par value \$0.0001 per share, who are entitled to notice of and to vote at the Special Meeting.

What are the voting rights of the holders of our common stock?

Each share of our common stock entitles the holder to one vote on all matters to come before the Special Meeting; provided, however, that holders of shares of our common stock issued upon conversion or redemption of the Series C Convertible Preferred Stock prior to shareholder approval of the NASDAQ Marketplace Rule Proposal will not be permitted to vote such shares with respect to the NASDAQ Marketplace Rule Proposal.

As to each of the proposals, holders of our common stock may vote “FOR,” “AGAINST,” or “ABSTAIN.”

How will my shares be voted if I am a shareholder of record?

Your proxy will be voted according to your instructions. If you are a shareholder of record and do not vote via the Internet or telephone or by returning a signed proxy card, your shares will not be voted unless you attend the Special Meeting and vote your shares. If you vote via the Internet or telephone and do not specify contrary voting instructions, your shares will be voted in accordance with the recommendations of our Board. Similarly, if you sign and submit your proxy card or voting instruction card with no instructions, your shares will be voted in accordance with the recommendations of our Board.

If I am a beneficial owner of shares, can my brokerage firm vote my shares?

If you are a beneficial owner and do not vote via the Internet or telephone or by returning a signed voting instruction card to your broker, your shares may be voted only with respect to so-called “routine” matters where your broker has discretionary voting authority over your shares. Under the rules of the New York Stock Exchange (“NYSE”), which apply to brokers regardless of whether an issuer is listed on the NYSE or NASDAQ, only the Increase Authorized Shares Proposal (Proposal 2) is a “routine” matter. Accordingly, brokers will have discretionary authority to vote only on the Increase Authorized Shares Proposal (Proposal 2).

If you are a beneficial owner and do not vote via the Internet or telephone or by returning a signed voting instruction card to your broker, your broker will not be permitted to vote your shares of common stock with respect to the NASDAQ Marketplace Rule Proposal (Proposal 1) or the Adjournment Proposal (Proposal 3), as under the rules of the NYSE these proposals are “non-routine.” If a broker holding shares returns an executed proxy card that indicates that the broker has not received voting instructions with respect to the NASDAQ Marketplace Rule Proposal (Proposal 1) or the Adjournment Proposal (Proposal 3), then such shares will not be considered to have been voted on such proposal. Your broker will vote your shares on the NASDAQ Marketplace Rule Proposal (Proposal 1) and the Adjournment Proposal (Proposal 3) only if you provide instructions on how to vote by following the instructions they provide to you. Accordingly, we encourage you to vote promptly, even if you plan to attend the Special Meeting. We encourage you to provide instructions to your brokerage firm via the Internet or telephone or by returning your signed voting instruction card. This ensures that your shares will be voted at the Special Meeting with respect to all of the proposals described in this Proxy Statement.

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How many votes are needed to approve each proposal?

Approval of the NASDAQ Marketplace Rule Proposal (Proposal 1) requires the affirmative vote of the holders of a majority of the shares of common stock casting votes in person or by proxy on such proposal at the Special Meeting. Under Delaware law, abstentions are not counted as “votes cast.” Accordingly, abstentions will not be counted toward the vote total for this proposal and will have no effect on the vote on this proposal. If you own shares through an intermediary, you must instruct your bank, broker or other holder of record how to vote in order for them to vote your shares so that your vote can be counted with respect to this proposal. Broker non-votes will have no effect on the vote on this proposal.

Approval of the Increase Authorized Shares Proposal (Proposal 2) requires the affirmative vote of the holders of a majority of the shares of our common stock outstanding as of the record date for the Special Meeting. Abstentions will have the effect of a vote “AGAINST” this proposal. There will be no broker non-votes with respect to this proposal. Approval of the Adjournment Proposal (Proposal 3) requires the affirmative vote of the holders of a majority of the shares of common stock casting votes in person or by proxy on such proposal at the Special Meeting (assuming a quorum is present). Under Delaware law, abstentions are not counted as “votes cast.” Accordingly, abstentions will not be counted toward the vote total for this proposal and will have no effect on the vote on this proposal. If you own shares through an intermediary, you must instruct your bank, broker or other holder of record how to vote in order for them to vote your shares so that your vote can be counted with respect to this proposal. Broker non-votes will have no effect on the vote on this proposal.

How does the Board recommend that I vote?

The Board recommends that you vote:

-
- “FOR” Proposal 1 – the NASDAQ Marketplace Rule Proposal;
-
- “FOR” Proposal 2 – the Increase Authorized Shares Proposal; and
-
- “FOR” Proposal 3 – the Adjournment Proposal.

Is my vote kept confidential?

Proxies, ballots and voting tabulations identifying shareholders are kept confidential and will not be disclosed to third parties except as may be necessary to meet legal requirements.

Where can I find the voting results of the Special Meeting?

We will announce preliminary voting results at the Special Meeting. We expect to publish final voting results in a Current Report on Form 8-K filed with the Securities and Exchange Commission (“SEC”) within four business days following the Special Meeting.

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BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information as of October 31, 2017 with respect to: (a) each of our directors; (b) each of our named executive officers named in the Summary Compensation Table under the heading “Executive Compensation” in our definitive proxy statement filed with the SEC on February 17, 2017; (c) Ms. Jennifer D. Arasimowicz, our Senior Vice President, General Counsel and Corporate Secretary, who was appointed a named executive officer on April 6, 2017; (d) POSCO Energy Co., Ltd. and NRG Energy, Inc.; and (e) all of our directors and executive officers as a group.

We have determined beneficial ownership in accordance with the rules of the SEC. Except as indicated by the footnotes below, we believe, based on the information furnished to us, that the persons and entities named in the table below have sole voting and dispositive power with respect to all shares of common stock they beneficially own. Applicable percentage ownership is based on [69,389,197] shares of common stock outstanding on October 31, 2017. In computing the number of shares of common stock beneficially owned by a person and the applicable percentage ownership of that person, we deemed outstanding shares of common stock subject to options held by that person that are currently exercisable or exercisable within 60 days of October 31, 2017. We did not deem these shares outstanding, however, for the purpose of computing the percentage ownership of any other person. Beneficial ownership representing less than one percent is denoted with an asterisk (“*”).

Unless indicated otherwise, the address of each holder is in care of FuelCell Energy, Inc., 3 Great Pasture Road, Danbury, CT 06810.

Name	Position	Number of Shares Beneficially Owned(1)	Percentage Beneficially Owned
Arthur A. Bottone	President & Chief Executive Officer; Director	198,592	*
Michael S. Bishop	Senior Vice President, Chief Financial Officer & Treasurer(2)	97,587	*
Jennifer D. Arasimowicz	Senior Vice President, General Counsel and Corporate Secretary	16,196	*
Anthony F. Rauseo	Senior Vice President & Chief Operating Officer(3)	112,048	*
James Herbert England	Director(4)	75,114	*
Matthew F. Hilzinger	Director(5)	64,068	*
John A. Rolls	Director(6)	218,512	*
Christopher S. Sotos	Director(7)	—	*
Natica von Althann	Director(8)	24,683	*
Togo Dennis West, Jr.	Director(9)	41,738	*
NRG Energy, Inc. 804 Carnegie Center Princeton, NJ 08540	(10)	1,420,363	2.05%
POSCO Energy Co., LTD. 440 Teheran-ro, Gangnam-Gu Seoul 135-777 Korea	(10)	2,565,534	3.70%
ALL DIRECTORS AND EXECUTIVE OFFICERS AS A GROUP	(10 PERSONS)(11)	848,538	1.22%