MARVELL TECHNOLOGY GROUP LTD
Form DEFA14A
October 15, 2007

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 x

Filed by a Party other than the Registrant o

Check the appropriate box:

o	Preliminary Proxy Statement
o	**Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
o	Definitive Proxy Statement
x	Definitive Additional Materials
o	Soliciting Material Pursuant to §240.14a-12

MARVELL TECHNOLOGY GROUP LTD.
(Name of Registrant as Specified In Its Charter)

N/A
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

x No fee required.

o Fee computed on table below per Exchange Act Rules 14a-6(i)(1) 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)	Proposed maximum aggregate value of transaction:
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o Fee paid previously with preliminary materials.

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(1)	Amount Previously Paid:
(2)	Form, Schedule or Registration Statement No.:
(3)	Filing Party:
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In connection with our 2007 annual general meeting of shareholders (the Annual General Meeting) to be held on Friday, October 19, 2007, Marvell Technology Group Ltd. (the Company) sent the following letter to certain of the Company s shareholders on October 15, 2007. Such letter outlines matters regarding the Company s 2007 Director Stock Incentive Plan (the 2007 Director Plan). A copy of the 2007 Director Plan, as currently proposed for approval at our Annual General Meeting, can be found by reference to Appendix A to our 2007 Proxy Statement filed on September 14, 2007 (Commission File No. 000-30877).

Subject: 2007 Director Stock Incentive Plan

Dear [Shareholder]:

Based on feedback received from the Company s shareholders relating to the proposed 2007 Director Stock Incentive Plan (the Proposed Plan), Marvell Technology Group Ltd. (the Company) would like to provide you with the following information:

Adoption of the Proposed Plan will not result in increased dilution. The Proposed Plan would take the place of the Company s existing 1997 Director s Stock Option Plan (the Existing Plan). The Existing Plan currently has available for future awards an aggregate of approximately 2.5 million Common Shares. The Proposed Plan, if adopted, would provide for the future awards of 750,000 Common Shares. Upon adoption of the Proposed Plan, the Existing Plan would terminate and no future awards would be granted thereunder. As a result, upon adoption of the Proposed Plan, there would be a net decrease of approximately 1.75 million shares available for future grant to the Company s outside directors.

Adoption of the Proposed Plan will help the Company offer competitive compensation packages to recruit and retain new outside directors. The Company has been advised by an independent compensation consultant that the equity grants contemplated by the Proposed Plan are competitive with prevailing market practices. If the Company were to offer less equity compensation to outside directors, it may become more difficult for the Company to recruit and retain outside directors, unless the Company provides outside directors with increased cash compensation. The Company believes that provision of equity compensation to outside directors will better align the interests of the Company s outside directors and shareholders.

Recommended Modifications to Proposed Plan

In addition, management of the Company hereby confirms that it will, within 60 days of the date of this letter, recommend that the Board of Directors of Marvell amend the 2007 Director Stock Incentive Plan as follows:

Awards of restricted stock, restricted stock units, performance shares and performance units granted under the Plan (collectively referred to in this letter as stock awards) will vest prorata over a minimum three year period based only on continued employment or service.

If you have any additional concerns, please contact me.

Sincerely,

Mike Rashkin

Interim Chief Financial Officer

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size:10pt;">

Three Months Ended
January 31,

Change

2013

2012

$

%
Total revenues

$
36,358

$
31,337

$
5,021

16

Total cost of revenues

$
38,669

$
29,233

$
9,436

32

Total gross (loss) profit

$
(2,311
)

$
2,104

$

(4,415
)

(210
)

Total cost-to-revenue ratio [1]

1.06

0.93

14

(1) Cost-to-revenue ratio is calculated as total cost of revenues divided by total revenues.

Total revenues for the three months ended January 31, 2013 increased $5.0 million, or 16 percent, to $36.4 million from $31.3 million during the same period last year. Total cost of revenues for the three months ended January 31, 2013 increased by $9.4 million, or 32 percent, to $38.7 million from $29.2 million during the same period last year. A discussion of the changes in product sales and service agreement revenues and advanced technologies contract revenues follows.

Refer to Critical Accounting Policies and Estimates for more information on revenue and cost of revenue reclassifications.

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Product sales and service and license revenues

Our product sales and service and license revenues and cost of revenues for the three months ended January 31, 2013 and 2012 were as follows:

	Three Months Ended January 31,		Change	
	2013	2012	$	%
Revenues:				
Product sales	$ 29,065	$ 26,202	$ 2,863	11
Service and license revenues	4,969	3,398	1,571	46
Total	$ 34,034	$ 29,600	$ 4,434	15
Cost of Revenues:				
Product sales	$ 29,944	$ 23,360	$ 6,584	28
Service and license revenues	6,485	4,300	2,185	51
Total	$ 36,429	$ 27,660	$ 8,769	32
Gross profit (loss):				
Gross profit (loss) from product sales	$ (879)	$ 2,842	$ (3,721)	(131)
Gross loss from service and license revenues	(1,516)	(902)	(614)	68
Total	$ (2,395)	$ 1,940	$ (4,335)	(223)
Product sales cost-to-revenue ratio (1)	1.03	0.89		16
Service agreement revenues cost-to-revenue ratio (1)	1.31	1.27		3

(1) Cost-to-revenue ratio is calculated as cost of sales and revenues divided by sales and revenues.

Product sales and service and license revenues increased $4.4 million, or 15 percent, in the three months ended January 31, 2013 to $34.0 million compared to $29.6 million for the prior year period. The increase is due to higher fuel cell kit sales, the beginning of revenue recognition for the Bridgeport fuel cell park of approximately $2.7 million and additional license and royalty income generated in the 2013 period. Beginning in the first quarter of 2013, license revenue is being recorded as service and license revenues. This change in prospective classification is due to the new license agreement entered into on October 31, 2012 for our core technology and the harmonization of POSCO licensing and royalty agreements to reflect fees and royalties for the exclusive rights to sell, install, service and repair complete DFC Power Plants in the Asia Market. Cost of product sales and service and license revenues increased $8.8 million, or 32 percent for the three months ended January 31, 2013 to $36.4 million compared to $27.7 million in the same period in the prior year. The Company incurred warranty and after-market costs of approximately $2.1 million during the quarter as a result of a select number of fuel cell stacks being damaged in the assembly process. This isolated issue has been thoroughly investigated, process changes implemented, and field repairs undertaken to support the limited number of customers impacted. Margins in the first quarter of 2013 were further impacted by unfavorable product mix and costs related to the Company's undertaking to increase production in the second quarter of 2013.

Gross loss for product sales and service and license revenues is $2.4 million, compared to gross profit of $1.9 million for the three months ended January 31, 2013. The cost-to-revenue ratio for product sales was 1.03-to-1.00 for the three months ended January 31, 2013 compared to 0.89-to-1.00 for the three months ended January 31, 2012.

Cost of product sales includes costs to design, engineer, manufacture and ship our power plants and power plant components to customers, site engineering and construction costs where we are responsible for power plant system installation, costs for stack module assembly and conditioning equipment sold to POSCO, warranty expense, liquidated damages and inventory excess and obsolescence charges. Cost of service and license agreements include maintenance and stack replacement costs to service power plants for customers with long-term service agreements and operating costs for our units under power purchase agreements (“PPA”).

Product Sales and Cost of Sales

Product sales and revenues for the three months ended January 31, 2013 included $25.1 million from the sale of power plants and fuel cell kits and $4.0 million of revenue primarily related to costs incurred for site engineering and construction

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services relating to the Bridgeport fuel cell park contract. This compared to product sales and revenues for the three months of January 31, 2012 which included $20.9 million from the sale of power plants and fuel cell kits and $5.3 million of revenue primarily from power plant component sales and site engineering and construction services.
Cost of product sales increased $6.5 million for the three months ended January 31, 2013 to $29.9 million, compared to $23.4 million in the same period the prior year. Gross profit decreased $3.7 million to a gross loss of $0.9 million in the three months ended January 31, 2013 compared to a gross profit of $2.8 million for the three months ended January 31, 2012 due to a select number of fuel cell stacks being damaged in the assembly process, an unfavorable product mix and costs related to the Company's undertaking to increase production in the second quarter of 2013.
As of January 31, 2013 our annual production run-rate was 56 MW. Numerous actions were undertaken during the first quarter of 2013 in preparation for increasing the annual production run-rate at the Torrington, Connecticut facility to 70 MW in the second quarter of 2013. The supply chain is ready to support the production increase. More than 50 direct manufacturing positions have been added since the start of the first quarter to support the production ramp. Total headcount globally is now 575 employees. Higher production volumes support increased quarterly revenue in 2013 and will lead to expanding margins from improved absorption of fixed overhead costs and broadening of the revenue mix to include complete power plant sales in North America and Europe.
Service and License Revenues and Cost of Revenues
Revenues for the three months ended January 31, 2013 from service and power purchase agreements and license fee and royalty agreements totaled $5.0 million, compared to $3.4 million for the same period in the prior year. The increase relates to the inclusion of license and royalty income within revenues beginning in the first quarter of fiscal 2013. The change in classification is a result of the new license and royalty agreement entered into with POSCO on October 31, 2012 for our core technology and the harmonization of the existing agreements to reflect fees and royalties to be earned for the rights to sell, install, service and repair complete DFC Power Plants. Classification of license and royalty income as revenue is reflective of our Asia market partnership and royalty based strategy and this business activity becoming an ongoing significant component of our central operations. Service and license cost of revenues increased to $6.5 million from $4.3 million for the prior year period. The gross loss on service and license agreements increased to $1.5 million for the three months ended January 31, 2013, compared to $0.9 million for the comparable prior year period. The decrease in service and license agreement margins is primarily due to additional costs incurred on service agreements in the 2013 period including reserves required due to the assembly quality issue discussed above under Product Sales and Cost of Sales. The loss on service agreements has historically been due to high maintenance, stack replacement and other costs on older and sub-MW product designs. As profitable megawatt-class service agreements are executed and as early generation sub-megawatt products are retired or become a smaller overall percentage of the installed fleet, we expect the margins on service agreements to increase.
Advanced technologies contracts
Advanced technologies contracts revenue and related costs for the three months ended January 31, 2013 and 2012 were as follows:

	Three Months Ended January 31,		Percentage
	2012	2011	change
Advanced technologies contracts	$ 2,324	$ 1,737	33 %
Cost of advanced technologies contracts	2,240	1,573	42 %
Gross profit	$ 84	$ 164	(49)%

Advanced technologies contracts revenue for the three months ended January 31, 2013 was $2.3 million, which increased $0.6 million when compared to $1.7 million of revenue for the three months ended January 31, 2012. Cost of advanced technologies contracts increased $0.7 million to $2.2 million for the three months ended January 31, 2013, compared to $1.6 million for the same period in the prior year. Gross profit from advanced technology contracts for the three months ended January 31, 2013 was $0.1 million or 4 percent, compared to $0.2 million or 9 percent for the three months ended January 31, 2012. The decrease in margins is due to the mix of cost share on contracts with activity during the period.

We contract with a concentrated number of customers for the sale of our products and for research and development contracts. Refer to Note 1 of notes to consolidated financial statements for more information on customer concentrations.

There can be no assurance that we will continue to achieve historical levels of sales of our products to our largest customers. Even though our customer base is expected to increase and our revenue streams to diversify, a substantial portion of net revenues could continue to depend on sales to a concentrated number of customers. Our agreements with these customers may be canceled if we fail to meet certain product specifications or materially breach the agreements, and our customers may seek to renegotiate the terms of current agreements or renewals. The loss of, or reduction in sales to, one or more of our larger customers, could have a material adverse effect on our business, financial condition and results of operations.

Administrative and selling expenses

Administrative and selling expenses were $5.4 million for the three months ended January 31, 2013 compared to $3.8 million during the three months ended January 31, 2012. Administrative and selling expenses increased as a result of increased business development activity in the U.S. and Europe.

Research and development expenses

Research and development expenses decreased $0.5 million to $3.3 million during the three months ended January 31, 2013, compared to $3.8 million for the same period in 2012. The decrease reflects resource requirements on the previously discussed manufacturing quality issue on a select batch of fuel cell stacks. Our internal research and development focus continues to be on initiatives that have near term product implementation potential and product cost reduction opportunities.

Loss from operations

Loss from operations for the three months ended January 31, 2012 was $11.1 million compared to a loss of $5.4 million for the same period in 2012. The increase was a result of a quality issue identified in a select batch of fuel cell stacks, unfavorable manufacturing variances and increased business development activity which increased administrative and selling expenses, partially offset by lower research and development expenses.

Interest expense

Interest expense for the three months ended January 31, 2013 and 2012 was $0.6 million. Interest expense for both periods includes interest for the amortization of the redeemable preferred stock of subsidiary of $0.5 million and $0.6 million, respectively.

Income/(loss) from equity investments

Equity in income of $0.05 million recorded in the three months ended January 31, 2013 represents our share of Versa's income through the acquisition date. A loss of $0.4 million was recorded for our share of Versa's losses for this investment for the three months ended January 31, 2012.

License fee and royalty income

License fee income for the three month period ended January 31, 2012 was $0.4 million which represents the license fee and royalty income earned from POSCO. Beginning in fiscal year 2013, license fees and royalty income have been included within revenues under service and license revenues. Refer to Critical Accounting Policies and Estimates for further discussion on this change.

Other income (expense), net

Other income (expense), net, was an expense of $0.3 million for the three month period ended January 31, 2013 compared to an income of $0.2 million for the same period in 2012.

Provision for income taxes

We have not paid federal or state income taxes in several years due to our history of net operating losses, although we have paid foreign taxes in South Korea. For the three months ended January 31, 2013 our provision for income taxes was insignificant. We have begun manufacturing products that are gross margin profitable on a per unit basis; however, we cannot estimate when production volumes will be sufficient to generate taxable domestic income. Accordingly, no tax benefit has been recognized for these net operating losses or other deferred tax assets as significant uncertainty exists surrounding the recoverability of these deferred tax assets.

Net loss attributable to noncontrolling interest

The net loss attributed to the noncontrolling interest for the three months ended January 31, 2013 and October 31, 2012 was $0.2 million and $0.1 million, respectively.

Preferred Stock dividends

Dividends recorded on the Series B Preferred Stock were $0.8 million in each of the three month periods of January 31, 2013, and 2012.

Net loss to common shareholders and loss per common share

Net loss to common shareholders represents the net loss for the period less the net loss attributable to noncontrolling interest, less the preferred stock dividends on the Series B Preferred Stock. For the three month periods ended January 31, 2013 and 2012, net loss to common shareholders was $12.5 million and $6.7 million, respectively and loss per common share was $(0.07) and $(0.05), respectively.

LIQUIDITY AND CAPITAL RESOURCES

The Company's future liquidity will be dependent on obtaining the order volumes and cost reductions necessary to achieve profitable operations. The Company expects to generate gross profit from product sales and revenues with production volumes in the range of 50 MW to 55 MW on an annualized basis. Increasing annual order volume and reduced product costs are expected to reduce annual cash use and we expect positive cash flows and net income profitability at an annual production rate of 80 - 90 MW. Actual results will depend on product mix, volume, future service costs and market pricing.

Annual production capacity at our manufacturing facility is up to 90 MW with full utilization under its current configuration. Numerous actions were undertaken during the first quarter of 2013 in preparation for increasing the annual production run-rate at the Torrington, Connecticut facility to 70 MW as a result of the increasing backlog. To support the production ramp more than 50 new manufacturing jobs have been created in Connecticut since the start of the first quarter.

The 121.8 MW POSCO order, combined with scheduled re-stacks of existing power plant installations that are currently under Service Agreements (SA's) is expected to provide a base level of production of approximately 50 MW per year through 2016 at the Company's production facility in Torrington, Connecticut. The Company also has production backlog of approximately 16 MW which are planned for 2013 production. The Company is targeting additional order flow of 20 to 30 MW in 2013. As order flow dictates, the Company will ramp up production to meet demand. EBITDA (earnings before interest, taxes, depreciation and amortization) breakeven is expected with annual production volume of approximately 80 MW.

The cell license agreement has multiple benefits for both FuelCell Energy and POSCO. POSCO is currently designing and will construct a cell manufacturing facility in South Korea capacity capable of producing up to 140 MW of product annually. Production in South Korea will improve responsiveness for meeting demand under the Renewable Portfolio Standard. The Company will avoid capital investment for Asian market development and will benefit from market expansion by receiving a royalty payment from POSCO for each power plant sold, with a 15 year royalty term. Establishing a second source of supply for fuel cell modules mitigates a risk factor for prospective customers evaluating long term fuel cell power plant projects that include scheduled replacement stacks. Increased production volume, whether in the USA or South Korea, will reduce the cost of DFC plants, further spurring market adoption.

If demand develops beyond the combined capacity of the Company and POSCO, we have the ability to further expand production capacity at our Torrington facility to approximately 150 MW. This expansion would require the addition of equipment (e.g. furnaces, tape casting and other equipment) to increase the capacity of certain manufacturing operations. Due to the economies of scale and equipment required, we believe it is more cost effective to add capacity in large blocks. We estimate that an expansion of the Company's Torrington facility to 150 MW would require additional capital investments of $30 to $40 million, although this expansion may occur in stages depending on the level of market demand.

In addition to cash flows from operations, we may also pursue raising capital through a combination of; (i) equity or strategic investments, (ii) debt financing (with improving operating results as the business grows, the Company expects to have access to the debt markets to finance capital expansion) and (iii) potential local or state Government loans or grants in return for manufacturing job creation. The timing and size of any financing will depend on multiple factors including market conditions, future order flow and the need to adjust production capacity. If we are unable to raise additional capital, our growth potential may be adversely affected and we may have to modify our plans. We anticipate that our existing capital resources, together with

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anticipated order, revenues and cash flows, will be adequate to satisfy our financial requirements and agreements through at least the next twelve months.

Cash Flows

Cash and cash equivalents totaled $86.3 million as of January 31, 2013 compared to $57.5 million as of October 31, 2012. The key components of our cash inflows and outflows were as follows:

Operating Activities – Net cash provided by operating activities was $30.9 million during the first three months of 2013 compared to $17.8 million used in operating activities during the first three months of 2012. Net cash provided by operating activities for the first three month period of 2013 is a result of a decrease in accounts receivable of $17.0 million from customer collections, a decrease in inventories of $3.2 million resulting from the deployment of modules to customers, an increase in deferred revenues of $27.4 million relating to the timing of customer milestone billings. These were partially offset by a decrease in accounts payable and accrued liabilities of $6.4 million. Net cash used of $17.8 million during the first three months of 2012 related to a decrease in deferred revenues of $6.2 million due to lower progress payments on commercial orders, an increase of $6.2 million in inventory relating to the build of inventory for future orders, a decrease in accrued liabilities of $3.3 million, and an increase in accounts receivable of $1.9 million.

Investing Activities – Net cash used in investing activities was $1.0 million during the first three months of 2013 compared to net cash provided by investing activities of $6.6 million during the first three months of 2012. The net cash used in investing activities for the first three months of 2013 related to capital expenditures of $1.4 million, partially offset by cash acquired from the Versa acquisition of $0.4 million. Cash provided by investing activities during the first three months of 2012 relates to the maturity of U.S. treasuries of $7.5 million, partially offset by capital expenditures of $0.9 million.

Financing Activities – Net cash used in financing activities was $1.2 million during the first three months of 2013 compared to net cash used in financing activities of $3.2 million in the prior year period. The net cash used in financing activities during the first three months of 2013 was primarily for the payment of preferred dividends and return of capital relating of $1.1 million compared to $4.3 million in 2012. The first three months of 2012 also included cash received from the sale of common stock of $1.2 million.

Sources and Uses of Cash and Investments

We continue to invest in new product and market development and, as such, we are not currently generating positive cash flow from our operations on a consistent basis. Our operations are funded primarily through cash generated from product sales and advanced technology contracts, license fee income and raising capital. In order to consistently produce positive cash flow from operations, we need to be successful at increasing annual order volume and implementing our cost reduction efforts. Please see our Form 10-K for the fiscal year ended October 31, 2012 for further details.

Commitments and Significant Contractual Obligations

A summary of our significant future commitments and contractual obligations as of January 31, 2013 and the related payments by fiscal year are as follows:

	Payments Due by Period				
	Total	Less than 1 Year	1 – 3 Years	3 – 5 Years	More than 5 Years
Purchase commitments (1)	$81,265	$73,629	$7,636	$—	$—
Series 1 Preferred obligation (2)	14,102	1,247	2,495	2,495	7,865
Term loans (principal and interest)	4,240	1,070	429	475	2,266
Capital and operating lease commitments (3)	5,250	2,157	2,328	574	191
Revolving Credit Facility (4)	4,000	4,000	—	—	—
Series B Preferred dividends payable (5)					
Totals	$108,857	$82,103	$12,888	$3,544	$10,322

(1) Purchase commitments with suppliers for materials, supplies and services incurred in the normal course of business.

(2) On March 31, 2011, the Company entered into an agreement with Enbridge, Inc. ("Enbridge") to modify the Class A Cumulative Redeemable Exchangeable Preferred Share Agreement (the "Series 1 Preferred Share Agreement"). The terms of the Series 1 preferred share agreement require payments of (i) an annual amount of Cdn$500,000 for dividends and (ii) an amount of Cdn.$750,000 as return of capital payments payable in cash. These payments commenced on March 31, 2011 and will end on December 31, 2020. Dividends accrue at a 1.25% quarterly rate on the unpaid principal balance, and additional dividends will accrue on the cumulative unpaid dividends (inclusive of the Cdn.$12.5 million unpaid dividend balance as of the modification date) at a rate of 1.25% per quarter, compounded quarterly. On December 31, 2020 the amount of all accrued and unpaid dividends on the Class A Preferred Shares of Cdn$21.1 million and the balance of the principal redemption price of Cdn.$4.4 million will be due to the holders of the Series 1 preferred shares. The Company has the option of making dividend payments in the form of common stock or cash under terms outlined in the preferred share agreement. For purposes of preparing the above table, the final balance of accrued and unpaid dividends due December 31, 2020 of Cdn.$21.1 million is assumed to be paid in the form of common stock and not included in this table.

(3) Future minimum lease payments on capital and operating leases.

(4) The amount represents the amount outstanding as of January 31, 2013 on a $5.0 million revolving credit facility with JPMorgan Chase Bank, N.A. and the Export-Import Bank of the United States. The credit facility is used for working capital to finance the manufacture and production and subsequent export sale of the Company's products or services. The agreement has a one year term with renewal provisions and the current expiration date is April 3, 2013. The outstanding principal balance of the facility will bear interest, at the option of the Company of either the one-month LIBOR plus 1.5 percent or the prime rate of JP Morgan Chase. The facility is secured by certain working capital assets and general intangibles, up to the amount of the outstanding facility balance.

(5) We pay $3.2 million in annual dividends on our Series B Preferred Stock. The $3.2 million annual dividend payment has not been included in this table as we cannot reasonably determine the period when or if we will be able to convert the Series B Preferred Stock into shares of our common stock. We may, at our option, convert these shares into the number of shares of our common stock that are issuable at the then prevailing conversion rate if the closing price of our common stock exceeds 150 percent of the then prevailing conversion price ($11.75) for 20 trading days during any consecutive 30 trading day period.

In April 2008, we entered into a 10-year loan agreement with the Connecticut Development Authority allowing for a maximum amount borrowed of $4.0 million. At January 31, 2013, we had an outstanding balance of $3.4 million on this loan. The interest rate is 5 percent and the loan is collateralized by the assets procured under this loan as well as $4.0 million of additional machinery and equipment. Repayment terms require interest and principal payments through May 2018.

Bridgeport FuelCell Park, LLC (“BFCP”), one of our wholly-owned subsidiaries, has an outstanding loan with the Connecticut Clean Energy Fund, secured by assets of BFCP. Interest accrues monthly at an annual rate of 8.75 percent and repayment of principal and accrued interest is not required until the occurrence of certain events. The outstanding balance on this loan, including accrued interest, is $0.9 million as of January 31, 2013. On March 5, 2013 the Company closed on a new long-term loan agreement with the Connecticut Clean Energy and Finance Investment Authority (CEFIA) totaling $5.9 million in support of the Bridgeport project. A portion of the proceeds of this new loan will be used to repay an existing loan of $0.9 million due to the Connecticut Clean Energy Fund. The balance of this loan will be drawn down during 2013 as working capital support

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during the construction period of the project. The loan agreement to carries an interest rate of 5.0% and principal repayments will commence on the eighth anniversary of the project's provisional acceptance date in forty eight equal monthly installments.

We have pledged approximately $15.6 million of our cash and cash equivalents as collateral and letters of credit for certain banking requirements and contracts. As of January 31, 2013, outstanding letters of credit totaled $14.7 million. These expire on various dates through July 2015.

As of October 31, 2012, we have uncertain tax positions aggregating $15.7 million and have reduced our net operating loss carryforwards by this amount. Because of the level of net operating losses and valuation allowances, unrecognized tax benefits, even if not resolved in our favor, would not result in any cash payment or obligation and therefore have not been included in the contractual obligation table above.

In addition to the commitments listed in the table above, we have the following outstanding obligations:

Power purchase agreements

In California, we have 1.5 MW of power plant installations under power purchase agreements ranging in duration from five to seven years. As owner of the power plants, we are responsible for all operating costs necessary to maintain, monitor and repair the power plants. Under certain agreements, we are also responsible for procuring fuel to run the power plants.

Service and warranty agreements

We warranty our products for a specific period of time against manufacturing or performance defects. Our standard warranty period is generally 15 months after shipment or 12 months after acceptance of the product. We have agreed to warranty kits and components for 21 months from the date of shipment due to the additional shipping and customer manufacture time required. In addition to the standard product warranty, we have contracted with certain customers to provide services to ensure the power plants meet minimum operating levels for terms ranging from one to 20 years. Our standard and most prevalent services agreement term is five years. Pricing for service contracts is based upon estimates of future costs, which could be materially different from actual expenses. Also see Critical Accounting Policies and Estimates for additional details.

Research and development cost-share contracts

We have contracted with various government agencies to conduct research and development as either a prime contractor or sub-contractor under multi-year, cost-reimbursement and/or cost-share type contracts or cooperative agreements. Cost-share terms require that participating contractors share the total cost of the project based on an agreed upon ratio. In many cases, we are reimbursed only a portion of the costs incurred or to be incurred on the contract. While government research and development contracts may extend for many years, funding is often provided incrementally on a year-by-year basis if contract terms are met and Congress authorizes the funds. As of January 31, 2013, research and development sales backlog totaled $18.0 million, of which $7.5 million is funded. Should funding be delayed or if business initiatives change, we may choose to devote resources to other activities, including internally funded research and development.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The preparation of financial statements and related disclosures requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses and the disclosure of contingent assets and liabilities. Actual results could differ from those estimates. Estimates are used in accounting for, among other things, revenue recognition, contract loss reserves, excess, slow-moving and obsolete inventories, product warranty costs, reserves on SA's, share-based compensation expense, allowance for doubtful accounts, depreciation and amortization, impairment of long-lived assets, purchase accounting, income taxes and contingencies. Estimates and assumptions are reviewed periodically, and the effects of revisions are reflected in the consolidated financial statements in the period they are determined to be necessary.

Our critical accounting policies are those that are both most important to our financial condition and results of operations and require the most difficult, subjective or complex judgments on the part of management in their application, often as a result of the need to make estimates about the effect of matters that are inherently uncertain.

Our accounting policies are set-forth below.

Revenue Recognition

We earn revenue from (i) the sale and installation of fuel cell power plants and modules (ii) the sale of component part kits and spare parts to customers, (iii) site engineering and construction services (iv) providing services under SA's, (v) the sale of electricity under PPA's as well as incentive revenue from the sale of electricity under PPA's, (vi) license fees and royalty income from manufacturing and technology transfer agreements, and (vii) customer-sponsored advanced technology projects.

The Company periodically enters into arrangements with customers that involve multiple elements of the above items. We assess such contracts to evaluate whether there are multiple deliverables, and whether the consideration under the arrangement is being appropriately allocated to each of the deliverables. Our revenue is primarily generated from customers located throughout the U.S. and Asia and from agencies of the U.S. Government. Revenue from product and kit sales, construction services and component part kits revenue is recorded as product sales in the consolidated statements of operations. Revenue from SA's, PPA's, license and royalty revenue and engineering services revenue is recorded as service and license revenues and revenue from customer-sponsored advanced technology from research and development projects is recorded as advanced technologies contract revenues in the consolidated statements of operations.

For customer contracts for complete DFC Power Plants which the Company has adequate cost history and estimating experience and that management believes it can reasonably estimate total contract costs, revenue is recognized under the percentage of completion method of accounting. The use of percentage of completion accounting requires significant judgment relative to estimating total contract costs, including assumptions relative to the length of time to complete the contract, the nature and complexity of the work to be performed, anticipated increases in wages and prices for subcontractor services and materials, and the availability of subcontractor services and materials. Our estimates are based upon the professional knowledge and experience of our engineers, program managers and other personnel, who review each long-term contract on a quarterly basis to assess the contract's schedule, performance, technical matters and estimated cost at completion. Changes in estimates are applied retrospectively and when adjustments in estimated contract costs are identified, such revisions may result in current period adjustments to earnings applicable to performance in prior periods. Revenues are recognized based on the percentage of the contract value that incurred costs to date bear to estimated total contract costs, after giving effect to estimates of costs to complete based on most recent information. For customer contracts for new or significantly customized products, where management does not believe it has the ability to reasonably estimate total contract costs, revenue is recognized using the completed contract method and therefore all revenue and costs for the contract are deferred and not recognized until installation and acceptance of the power plant is complete. For all types of contracts, we recognize anticipated contract losses as soon as they become known and estimable. We have recorded an estimated contract loss reserve of $0.04 million as of January 31, 2013 and October 31, 2012. Actual results could vary from initial estimates and reserve estimates will be updated as conditions change.

Revenue from component part kits and spare parts sales is recognized upon shipment or title transfer under the terms of the customer contract. Terms for certain contracts provide for a transfer of title and risk of loss to our customers at our factory locations upon completion of our contractual requirement to produce and products prepare the products for shipment. A shipment in place may occur in the event that the customer is unready to take delivery of the products on the contractually specified delivery dates.

Site engineering and construction services revenue is recognized on a percentage of completion basis as costs are incurred.

Revenue from service agreement contracts is generally recorded ratably over the term of the SA, as our performance of routine monitoring and maintenance under these SA's are generally expected to be incurred on a straight-line basis. For SA's where we expect to have a restack at some point during the term (generally SA's in excess of five years), the costs of performance are not expected to be incurred on a straight-line basis, and therefore, a portion of the initial value related to the stack replacement is deferred and is recognized upon such stack replacement event. In the event a restack occurs whereby the stack estimated useful life exceeds the remaining contract term and if the customer agrees at the time of a restack to return the stack to the Company at the end of the term, the cost of the stack is recorded as a long-term asset and depreciated over its expected life, in which case we would record the remaining SA revenue ratably over the remaining term. If the Company does not obtain rights to title from the customer upon a restack, the cost of the stack is expensed.

Under PPA's, revenue from the sale of electricity is recognized as electricity is provided to the customer. Incentive revenue is recognized ratably over the term of the PPA.

The Company receives license fees and royalty income from POSCO as a result of manufacturing and technology transfer agreements entered into in 2007, 2009 and 2012. On October 31, 2012, we entered into a new license agreement; Cell Technology Transfer Agreement which provides POSCO with the technology to manufacture Direct FuelCell power plants in South Korea and the market access to sell power plants throughout Asia. In conjunction with this agreement we amended the 2010-year manufacturing and distribution agreement with POSCO and the 2009 License Agreement. The new 2012 agreement and the amendments contain multiple elements, including the license of technology and market access rights, fuel cell kit product deliverables, as well as professional service deliverables. We have identified these three items as deliverables under the multiple-element arrangement guidance and have evaluated the estimated selling prices to be allocated on a relative fair value basis to these deliverables, as vendor-specific objective evidence and third-party evidence was not available. The Company's determination of estimated selling prices involves the consideration of several factors based on the specific facts and circumstances of each arrangement. Specifically, the Company considers the cost to produce the tangible product and professional service deliverables, the anticipated margin on those deliverables, prices charged when those deliverables are sold on a stand-alone basis in limited sales, and the Company's ongoing pricing strategy and practices used to negotiate and price overall bundled product, service and license arrangements. We are amortizing the consideration allocated to the license of technology and market access rights over the 15 year license term on a straight-line basis, and will recognize the amounts allocated to the kit deliverables and professional service deliverables, when such items are delivered to POSCO. We have also determined that based on the utility to the customer of the fully developed technology that was licensed in the Cell Technology Transfer Agreement, there is stand-alone value for this deliverable.

Beginning in fiscal year 2013, license fees and royalty income have been included within revenues on the consolidated statement of operations. This change is a result of the new license agreement entered into on October 31, 2012 for our core technology and the harmonization of the agreements to reflect fees and royalties for the manufacture of complete DFC Power Plants. Classification as revenue is reflective of our Asia market partnership and royalty based strategy and this business activity has become a significant component of non-product revenue and is expected to continue to grow over time.

Revenue from advanced technology contracts is recognized proportionally as costs are incurred and compared to the estimated total advanced technology costs for each contract. Revenue from customer funded advanced technology programs are generally multi-year, cost-reimbursement and/or cost-shared type contracts or cooperative agreements. We are reimbursed for reasonable and allocable costs up to the reimbursement limits set by the contract or cooperative agreement, and on certain contracts we are reimbursed only a portion of the costs incurred. While advanced technology contracts may extend for many years, funding is often provided incrementally on a year-by-year basis if contract terms are met and Congress has authorized the funds.

Inventories and Advance Payments to Vendors

Inventories consist principally of raw materials and work-in-process. In certain circumstances, we will make advance payments to vendors for future inventory deliveries. These advance payments are recorded as other current assets on the consolidated balance sheets.

Inventory is reviewed to determine if valuation adjustments are required for obsolescence (excess, obsolete, and slow-moving inventory). This review includes analyzing inventory levels of individual parts considering the current design of our products and production requirements as well as the expected inventory needs for maintenance on installed power plants.

Warranty and Service Expense Recognition

We warranty our products for a specific period of time against manufacturing or performance defects. Our warranty is limited to a term generally 15 months after shipment or 12 months after acceptance of our products, except for fuel cell kits. We have agreed to warranty fuel cell kits and components for 21 months from the date of shipment due to the additional shipping and customer manufacture time required. We reserve for estimated future warranty costs based on historical experience. We also provide for a specific reserve if there is a known issue requiring repair during the warranty period. Estimates used to record warranty reserves are updated as we gain further operating experience. As of January 31, 2013 and October 31, 2012, the warranty reserve, which is classified in accrued liabilities on the consolidated balance sheet, totaled $2.3 million.

In addition to the standard product warranty, we have entered into service agreement contracts with certain customers to provide monitoring, maintenance and repair services for fuel cell power plants. Under the terms of our service agreement, the power plant must meet a minimum operating output during the term. If minimum output falls below the contract requirement, we may be subject to performance penalties or may be required to repair or replace the customer's fuel cell stack. The Company has provided for a reserve for performance guarantees of $2.4 million and $2.2 million as of January 31, 2013 and October 31, 2012.

The Company provides for reserves on all SA's when the estimated future stack replacements and service costs exceed the remaining contract value. Reserve estimates for future costs on SA's are determined by a number of factors including the estimated remaining life of the stack, used replacement stacks available, our limit of liability on SA's and future operating plans for the power plant. Our reserve estimates are performed on a contract by contract basis and include cost assumptions based on what we anticipate the service requirements will be to fulfill obligations for each contract. As of January 31, 2013, our reserve on service agreement contracts totaled $5.5 million compared to $5.0 million as of October 31, 2012.

At the end of our SA's, customers are expected to either renew the SA or we anticipate that the stack module will be returned to the Company as the plant is no longer being monitored or having routine service performed. In situations where we do not expect to have a restack during the term, but a restack is required and if the customer agrees at the time of a restack to return the stack to the Company at the end of the SA term, the cost of the stack is recorded as a long-term asset and depreciated over its expected life. If the Company does not obtain rights to title from the customer the cost of the stack is expensed. As of October 31, 2013, the total remaining stack asset value was $12.9 million compared to $14.3 million as of October 31, 2012.

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As of January 31, 2013, accumulated depreciation on stack assets totaled approximately $8.6 million compared to $7.6 million at October 31, 2012.

During fiscal 2011, the Company committed to a repair and upgrade program for a select group of 1.2 megawatt (MW) fuel cell modules produced between 2007 and early 2009. As of January 31, 2013, the balance was $4.7 million compared to $4.8 million as of October 31, 2012.

The Company has completed the repair activities related to the program. The remaining balance is primarily related to modules which are expected to be deployed as field replacements and will be provided to POSCO per the terms of the commitment when needed.

Share-Based Compensation

We account for restricted stock awards (RSA's) based on the closing market price of the Company's common stock on the date of grant. We account for stock options awarded to employees and non-employee directors under the fair value method of accounting using the Black-Scholes valuation model to estimate fair value at the grant date. The model requires us to make estimates and assumptions regarding the expected life of the option, the risk-free interest rate, the expected volatility of our common stock price and the expected dividend yield. The fair value of equity awards is amortized to expense over the vesting period, generally four years. Share-based compensation was $0.5 million for the three months ended January 31, 2013 and October 31, 2012.

Income Taxes

Income taxes are accounted for under the liability method. Deferred tax assets and liabilities are determined based on net operating loss (“NOL”) carryforwards, research and development credit carryforwards, and differences between financial reporting and income tax bases of assets and liabilities. Deferred tax assets and liabilities are measured using enacted tax rates and laws expected to be in effect when the differences are expected to reverse. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is recorded against deferred tax assets if it is unlikely that some or all of the deferred tax assets will be realized.

We apply the guidance regarding how a company should recognize, measure, present, and disclose in its financial statements uncertain tax positions that the Company has taken or expects to take on a tax return (including a decision whether to file or not file a return in a particular jurisdiction). The company's financial statements reflect expected future tax consequences of such positions presuming the taxing authorities' full knowledge of the position and all relevant facts.

The evaluation of a tax position is a two-step process. The first step is recognition: the company determines whether it is more likely than not that a tax position will be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. The second step is measurement: a tax position that meets the “more likely than not” recognition threshold is measured to determine the amount of benefit to recognize in the financial statements. The tax position is measured at the largest amount of benefit that is greater than 50 percent likely of being realized upon ultimate settlement.

Certain transactions involving the Company's beneficial ownership occurred in fiscal 2012 and prior years, which could have resulted in a stock ownership change for purposes of Section 382 of the Internal Revenue Code of 1986, as amended. We completed a detailed Section 382 study in fiscal 2012 to determine if any of our NOL and credit carryovers will be subject to limitation. Based on that study we have determined that there was no ownership change as of October 31, 2012 under Section 382.

ACCOUNTING GUIDANCE UPDATE

Recently Adopted Accounting Guidance

In June 2011, the FASB issued guidance that eliminates the option to present items of other comprehensive income (“OCI”) as part of the statement of changes in stockholders’ equity, and instead requires either OCI presentation and net income in a single continuous statement to the statement of operations, or as a separate statement of comprehensive income. This new guidance is effective for fiscal years, and interim periods within those years, beginning after December 15, 2011, with early adoption permitted. The Company has adopted this update in the first quarter of fiscal year 2013. The adoption of this accounting guidance only impacted our financial statement presentation and did not have a material impact on our financial position, results of operations or disclosures.

Recent Accounting Guidance Not Yet Effective

In December 2011, the FASB issued guidance to enhance a financial statement user's ability to understand the effects of netting arrangements on an entity's financial statements, including financial instruments and derivative instruments that are either offset or subject to an enforceable master netting or similar arrangement. The scope of this guidance includes derivatives, sale and repurchase agreements and reverse sale and repurchase agreements, and securities borrowing and securities lending arrangements. This guidance also includes enhanced disclosure requirements, including both gross and net information about instruments and transactions eligible for offset or subject to an agreement similar to a master netting arrangement. The provisions will be applied retrospectively for interim and annual periods beginning on or after January 1, 2013. The adoption of this accounting guidance is not expected to have a material impact on our financial statements.

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Interest Rate Exposure

We typically invest in U.S. treasury securities with maturities ranging from less than three months to one year or more. We typically hold these investments until maturity and accordingly, these investments are carried at cost and not subject to mark-to-market accounting. At January 31, 2013, we had no U.S. treasury investments. Cash is invested overnight with high credit quality financial institutions and therefore we are not exposed to market risk on our cash holdings from changing interest rates. Based on our overall interest rate exposure at January 31, 2013, including all interest rate sensitive instruments, a change in interest rates of one percent would not have a material impact on our results of operations.

Foreign Currency Exchange Risk

As of January 31, 2013, approximately three percent of our total cash, cash equivalents and investments were in currencies other than U.S. dollars (primarily the Euro, Canadian dollars and South Korean Won). We make purchases from certain vendors in currencies other than U.S. dollars. Although we have not experienced significant foreign exchange rate losses to date, we may in the future, especially to the extent that we do not engage in currency hedging activities. The economic impact of currency exchange rate movements on our operating results is complex because such changes are often linked to variability in real growth, inflation, interest rates, governmental actions and other factors. These changes, if material, may cause us to adjust our financing and operating strategies.

Derivative Fair Value Exposure

Series 1 Preferred Stock

The conversion feature and the variable dividend obligation of our Series 1 Preferred shares are embedded derivatives that require bifurcation from the host contract. The aggregate fair value of these derivatives included within long-term debt and other liabilities as of January 31, 2013 and October 31, 2012 was $0.7 million, respectively. The fair value was based on valuation models using various assumptions including historical stock price volatility, risk-free interest rate and a credit spread based on the yield indexes of technology high yield bonds, foreign exchange volatility as the Series 1 Preferred security is denominated in Canadian dollars, and the closing price of our common stock. Changes in any of these assumptions would change the underlying fair value with a corresponding charge or credit to earnings. However, any changes to these assumptions would not have a material impact on our results of operations.

Item 4. CONTROLS AND PROCEDURES

The Company maintains disclosure controls and procedures, which are designed to provide reasonable assurance that information required to be disclosed in the Company's periodic SEC reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to its principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

We carried out an evaluation, under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, the Company's principal executive officer and principal financial officer have concluded that the Company's disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed in the Company's periodic SEC reports is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to its principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

There has been no change in our internal controls over financial reporting that occurred during the last fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

We are involved in legal proceedings, claims and litigation arising out of the ordinary conduct of our business. Although we cannot assure the outcome, management presently believes that the result of such legal proceedings, either individually, or in the aggregate, will not have a material adverse effect on our consolidated financial statements, and no material amounts have been accrued in our consolidated financial statements with respect to these matters.

Item 1A. RISK FACTORS

There have been no material changes with respect to the risk factors disclosed in our Annual Report on Form 10-K for the fiscal year ended October 31, 2012.

Item 6. EXHIBITS

Exhibit No.	Description
10.69	Loan Agreement, dated March 5, 2013, between Clean Energy Finance and Investment Authority and the Company.
10.70	Security Agreement, dated March 5, 2013, by the Company in favor of the Clean Energy Finance and Investment Authority.
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
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101.INS#	XBRL Instance Document
101.SCH#	XBRL Schema Document
101.CAL#	XBRL Calculation Linkbase Document
101.LAB#	XBRL Labels Linkbase Document
101.PRE#	XBRL Presentation Linkbase Document
101.DEF#	XBRL Definition Linkbase Document

The exhibits marked with the section symbol (#) are interactive data files. Pursuant to Rule 406T of Regulation S-T, these interactive data files (i) are not deemed filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, are not deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, irrespective of any general incorporation language included in any such filings, and otherwise are not subject to liability under these sections; and (ii) are deemed to have complied with Rule 405 of Regulation S-T ("Rule 405") and are not subject to liability under the anti-fraud provisions of the Section 17(a)(1) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 or under any other liability provision if we have made a good faith attempt to comply with Rule 405 and, after we become aware that the interactive data files fail to comply with Rule 405, we promptly amend the interactive data files.

SIGNATURE

Pursuant to the requirements of Section 13 or 15(d) 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 on March 12, 2013.

	FUELCELL ENERGY, INC.
	(Registrant)
March 12, 2013	/s/ Michael S. Bishop
	Michael S. Bishop
	Senior Vice President, Chief Financial Officer,
Date	Treasurer and Corporate Secretary
	(Principal Financial Officer and Principal Accounting Officer)

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