

FUELCELL ENERGY INC

Form 10-Q/A

February 08, 2010

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
Form 10-Q/A**

☒ **Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934  
For the quarterly period ended January 31, 2009**  
or

☐ **Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission File Number 1-14204  
FUELCELL ENERGY, INC.  
(Exact name of Registrant as Specified in its Charter)**

Delaware  
(State or other jurisdiction of  
incorporation or organization)

06-0853042  
(I.R.S. Employer Identification Number)

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

**06813**  
Zip Code

(203) 825-6000

(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

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

Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐ Small reporting company ☐

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

Number of shares of common stock, par value \$.0001 per share, outstanding at March 9, 2009: 69,017,261

The purpose of this Amendment to the Form 10-Q for the quarter ended January 31, 2009 is to revise Exhibit 10.2 contained in Item 6.

**FUELCELL ENERGY, INC.**

**FORM 10-Q/A**

As of and For the Three Month Period Ended January 31, 2009

**PART II. OTHER INFORMATION**

Item 6. Exhibits

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Signature

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Exhibit 10.2

Exhibit 31.1

Exhibit 31.2

Exhibit 32.1

Exhibit 32.2

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**PART II OTHER INFORMATION**

Confidential treatment has been requested as to certain portions of Exhibits 10.1 and 10.2. Redacted portions of the exhibits are marked with an \* and have been filed separately with the Securities and Exchange Commission ( SEC ).

**Item 6. EXHIBITS**

| <b>Exhibit No.</b> | <b>Description</b>                                                                                                                                                                                                                                                                                                   |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.1                | Certificate of Designation for the 5% Series B Cumulative Convertible Perpetual Preferred Stock (Liquidation Preference \$1,000) (incorporated by reference to Exhibit 3.1 contained in the Company's Form 8-K, dated November 22, 2004)                                                                             |
| 4.2                | Schedule A to Articles of Amendment of FuelCell Energy, Ltd., setting forth the rights, privileges, restrictions and conditions of Class A Cumulative Redeemable Exchangeable Preferred Shares (incorporated by reference to Exhibit 4.2 contained in the Company's Form 10-Q for the period ended January 31, 2009) |
| 10.1               | Alliance Agreement between FuelCell Energy, Inc. and POSCO Power, dated as of February 7, 2007 (incorporated by reference to Exhibit 10.1 contained in the Company's Form 10-Q/A for the period ended January 31, 2009)                                                                                              |
| 10.2               | Technology Transfer, License and Distribution Agreement between FuelCell Energy, Inc. and POSCO Power, dated as of February 7, 2007                                                                                                                                                                                  |
| 10.3               | Loan agreement, dated April 29, 2008, between the Company and the Connecticut Development Authority. (incorporated by reference to Exhibit 10.3 contained in the Company's Form 10-Q for the period ended January 31, 2009)                                                                                          |
| 14                 | Code of Ethics applicable to the Company's principal executive officer, principal financial officer and principal accounting officer (incorporated by reference to Exhibit 14 contained in the Company's 10-K for the year ended October 31, 2003)                                                                   |
| 31.1               | CEO Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002                                                                                                                                                                                                                                          |
| 31.2               | CFO Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002                                                                                                                                                                                                                                          |
| 32.1               | CEO Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002                                                                                                                                                                                                                                          |
| 32.2               | CFO Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002                                                                                                                                                                                                                                          |

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**SIGNATURE**

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 thereunto duly authorized.

**FUELCELL ENERGY, INC.**  
**(Registrant)**

**February 5, 2010**  
**Date**

/s/ Joseph G. Mahler

**Joseph G. Mahler**  
Senior Vice President, Chief Financial Officer,  
Treasurer and Corporate Secretary  
(Principal Financial Officer and Principal Accounting  
Officer)

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**INDEX OF EXHIBITS**

Confidential treatment has been requested as to certain portions of Exhibits 10.1 and 10.2. Redacted portions of the exhibits are marked with an \* and have been filed separately with the SEC.

| <b>Exhibit No.</b> | <b>Description</b>                                                                                                                  |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| 10.2               | Technology Transfer, License and Distribution Agreement between FuelCell Energy, Inc. and POSCO Power, dated as of February 7, 2007 |
| 31.1               | CEO Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002                                                         |
| 31.2               | CFO Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002                                                         |
| 32.1               | CEO Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002                                                         |
| 32.2               | CFO Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002                                                         |