

REFINITIV

DELTA REPORT

10-Q

FCEL - FUELCELL ENERGY INC

10-Q - JANUARY 31, 2024 COMPARED TO 10-Q - JULY 31, 2023

The following comparison report has been automatically generated

TOTAL DELTAS 2432

 CHANGES 493

 DELETIONS 1161

 ADDITIONS 778

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended **July 31, 2023**

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



Graphic

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 No.)

3 Great Pasture Road
Danbury, Connecticut
(Address of principal executive offices)

06810
(Zip Code)

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

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

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

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

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

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

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

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

Number of shares of common stock, par value \$0.0001 per share, outstanding as of **September 5, 2023** **March 1, 2024:** **450,626,333** **451,862,054**

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FUELCELL ENERGY, INC.

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PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

FUELCELL ENERGY, INC.

Consolidated Balance Sheets

(Unaudited)

(Amounts in thousands, except share and per share amounts)

		July 31, 2023	October 31, 2022
ASSETS			
Current assets:			
Cash and cash equivalents, unrestricted		\$ 303,679	\$ 458,055
Restricted cash and cash equivalents - short-term		6,078	4,423
Investments - short-term		77,431	-
Accounts receivable, net		10,102	4,885
Unbilled receivables		18,986	11,019
Inventories		85,561	90,909
Other current assets		12,832	10,989
Total current assets		<u>514,669</u>	<u>580,280</u>
Restricted cash and cash equivalents - long-term		26,665	18,566
Inventories - long-term		7,549	7,549
Project assets, net		248,223	232,886
Property, plant and equipment, net		79,533	58,137
Operating lease right-of-use assets, net		8,690	7,189
Goodwill		4,075	4,075
Intangible assets, net		16,400	17,373
Other assets		39,449	13,662
Total assets (1)		<u>\$ 945,253</u>	<u>\$ 939,717</u>
LIABILITIES AND STOCKHOLDERS' EQUITY			
Current liabilities:			
Current portion of long-term debt		\$ 9,763	\$ 13,198
Current portion of operating lease liabilities		668	650
Accounts payable		22,404	28,196

Accrued liabilities	23,046	27,415
Deferred revenue	3,114	16,341
Total current liabilities	58,995	85,800
Long-term deferred revenue and customer deposits	-	9,095
Long-term operating lease liabilities	9,277	7,575
Long-term debt and other liabilities	109,130	82,863
Total liabilities (1)	177,402	185,333
Redeemable Series B preferred stock (liquidation preference of \$64,020 as of July 31, 2023 and October 31, 2022)	59,857	59,857
Redeemable noncontrolling interest	-	3,030
Total equity:		
Stockholders' equity:		
Common stock (\$0.0001 par value); 500,000,000 shares authorized as of July 31, 2023 and October 31, 2022; 444,704,081 and 405,562,988 shares issued and outstanding as of July 31, 2023 and October 31, 2022, respectively	44	41
Additional paid-in capital	2,186,405	2,094,076
Accumulated deficit	(1,485,177)	(1,407,973)
Accumulated other comprehensive loss	(1,620)	(1,752)
Treasury stock, Common, at cost (206,544 and 142,837 shares as of July 31, 2023 and October 31, 2022, respectively)	(1,026)	(855)
Deferred compensation	1,026	855
Total stockholder's equity	699,652	684,392
Noncontrolling interests	8,342	7,105
Total equity	707,994	691,497
Total liabilities, redeemable Series B preferred stock, redeemable noncontrolling interest and total equity	\$ 945,253	\$ 939,717

	January 31, 2024	October 31, 2023
ASSETS		
Current assets:		
Cash and cash equivalents, unrestricted	\$ 297,466	\$ 249,952
Restricted cash and cash equivalents - short-term	5,957	5,159
Investments - short-term	-	103,760
Accounts receivable, net	3,346	3,809
Unbilled receivables	22,451	16,296
Inventories	102,859	84,456
Other current assets	13,152	12,881
Total current assets	445,231	476,313
Restricted cash and cash equivalents - long-term	45,376	44,465
Inventories - long-term	2,743	7,329
Project assets, net	260,790	258,066
Property, plant and equipment, net	97,941	89,668
Operating lease right-of-use assets, net	8,197	8,352
Goodwill	4,075	4,075
Intangible assets, net	15,752	16,076
Other assets	43,075	51,176
Total assets (1)	<u>\$ 923,180</u>	<u>\$ 955,520</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Current portion of long-term debt	\$ 10,198	\$ 10,067
Current portion of operating lease liabilities	694	599
Accounts payable	17,055	26,518
Accrued liabilities	22,323	26,313
Deferred revenue	3,616	2,406

Total current liabilities	53,886	65,903
Long-term deferred revenue and customer deposits	686	732
Long-term operating lease liabilities	8,912	8,992
Long-term debt and other liabilities	117,670	119,588
Total liabilities (1)	181,154	195,215
Redeemable Series B preferred stock (liquidation preference of \$64,020 as of January 31, 2024 and October 31, 2023)	59,857	59,857
Total equity:		
Stockholders' equity:		
Common stock (\$0.0001 par value); 1,000,000,000 shares authorized as of January 31, 2024 and October 31, 2023; 451,862,054 and 450,626,862 shares issued and outstanding as of January 31, 2024 and October 31, 2023, respectively	45	45
Additional paid-in capital	2,200,862	2,199,661
Accumulated deficit	(1,535,334)	(1,515,541)
Accumulated other comprehensive loss	(1,639)	(1,672)
Treasury stock, Common, at cost (290,866 and 246,468 shares as of January 31, 2024 and October 31, 2023, respectively)	(1,129)	(1,078)
Deferred compensation	1,129	1,078
Total stockholder's equity	663,934	682,493
Noncontrolling interests	18,235	17,955
Total equity	682,169	700,448
Total liabilities, redeemable Series B preferred stock and total equity	\$ 923,180	\$ 955,520

(1) As of **July 31, 2023** January 31, 2024 and **October 31, 2022** October 31, 2023, the combined assets of the variable interest entities ("VIEs") were **\$126,041** \$313,629 and **\$119,223** \$235,290, respectively, that can only be used to settle obligations of the VIEs. These assets include cash of **\$3,222** \$3,764, unbilled accounts receivable of **\$1,865** 5,133, operating lease right of use assets of **\$1,176** \$1,676, other current assets of **\$21,289** \$127,511, restricted cash and cash equivalents of **\$500** \$624, project assets of **\$96,852** \$171,094 and other assets of **\$1,138** \$3,826 as of **July 31, 2023** January 31, 2024, and cash of **\$2,149** \$4,797, unbilled accounts receivable of **\$1,070** \$1,876, other current assets of **\$14,373** \$50,713, operating lease right of use assets of **\$1,184** and \$1,680, project assets of **\$100,448** \$170,444, derivative asset of \$4,127 and other assets of \$1,125 as of **October 31, 2022** October 31, 2023. The combined liabilities of the VIEs as of **July 31, 2023** January 31, 2024 include short-term operating lease liabilities of **\$157** \$203, accounts payable of **\$88,384** \$177,279, accrued liabilities of \$21, long-term operating lease liability of **\$1,476** \$2,155 and other non-current liabilities of **\$184** \$229 and, as of **October 31, 2022** October 31, 2023, include short-term operating lease liabilities of **\$157** \$203, accounts payable of **\$76,050**, accrued liabilities of **\$824** and \$165,824, long-term operating lease liability of **\$1,478** \$2,159 and other non-current liabilities of **\$187**.

See accompanying notes to consolidated financial statements.

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FUELCELL ENERGY, INC.
Consolidated Statements of Operations and Comprehensive Loss
(Unaudited)
(Amounts in thousands, except share and per share amounts)

	Three Months Ended July 31,	
	2023	2022
Revenues:		
Product	\$ -	\$ 18,000
Service	9,841	9,049
Generation	10,982	10,877
Advanced Technologies	4,687	5,178
Total revenues	25,510	43,104
Costs of revenues:		

Product	2,910	17,919
Service	9,575	7,718
Generation	17,483	18,136
Advanced Technologies	3,757	3,511
Total costs of revenues	33,725	47,284
Gross loss	(8,215)	(4,180)
Operating expenses:		
Administrative and selling expenses	17,560	14,158
Research and development expenses	15,620	9,659
Total costs and expenses	33,180	23,817
Loss from operations	(41,395)	(27,997)
Interest expense	(1,912)	(1,622)
Interest income	3,966	932
Gain on extinguishment of finance obligations and debt, net	15,337	-
Other income, net	403	204
Loss before provision for income taxes	(23,601)	(28,483)
Provision for income taxes	-	(494)
Net loss	(23,601)	(28,977)
Net income attributable to noncontrolling interests	678	437
Net loss attributable to FuelCell Energy, Inc.	(24,279)	(29,414)
Series B preferred stock dividends	(800)	(800)
Net loss attributable to common stockholders	\$ (25,079)	\$ (30,214)
Loss per share basic and diluted:		
Net loss per share attributable to common stockholders	\$ (0.06)	\$ (0.08)
Basic and diluted weighted average shares outstanding	415,867,594	387,465,758

	Three Months Ended January 31,	
	2024	2023
Revenues:		
Product	\$ -	\$ 9,095
Service	1,617	13,882
Generation	10,493	9,557
Advanced Technologies	4,581	4,539
Total revenues	16,691	37,073
Costs of revenues:		
Product	2,391	1,029
Service	1,888	10,945
Generation	20,894	16,602
Advanced Technologies	3,243	3,260
Total costs of revenues	28,416	31,836
Gross (loss) profit	(11,725)	5,237
Operating expenses:		
Administrative and selling expenses	16,400	15,009
Research and development expenses	14,353	12,683
Total costs and expenses	30,753	27,692
Loss from operations	(42,478)	(22,455)
Interest expense	(2,338)	(1,512)
Interest income	4,067	3,410
Other (expense) income, net	(3,650)	49
Loss before provision for income taxes	(44,399)	(20,508)
Provision for income taxes	-	(578)
Net loss	(44,399)	(21,086)
Net loss attributable to noncontrolling interests	(24,606)	(2,464)
Net loss attributable to FuelCell Energy, Inc.	(19,793)	(18,622)
Series B preferred stock dividends	(800)	(800)
Net loss attributable to common stockholders	\$ (20,593)	\$ (19,422)

Loss per share basic and diluted:			
Net loss per share attributable to common stockholders	\$ (0.05)	\$ (0.05)	
Basic and diluted weighted average shares outstanding	451,637,041	405,803,753	

	Three Months Ended July 31,		Three Months Ended January 31,	
	2023		2024	
	2023	2022	2024	2023
Net loss	\$ (23,601)	\$ (28,977)	\$ (44,399)	\$ (21,086)
Other comprehensive loss:				
Foreign currency translation adjustments	(164)	(86)	33	447
Total comprehensive loss	\$ (23,765)	\$ (29,063)	\$ (44,366)	\$ (20,639)
Comprehensive income attributable to noncontrolling interests	678	437		
Comprehensive loss attributable to noncontrolling interests			(24,606)	(2,464)
Comprehensive loss attributable to FuelCell Energy, Inc.	\$ (24,443)	\$ (29,500)	\$ (19,760)	\$ (18,175)

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FUELCELL ENERGY, INC.
Consolidated Statements of Operations and Comprehensive Loss
(Unaudited)
(Amounts in thousands, except share and per share amounts)

	Nine Months Ended July 31,	
	2023	2022
Revenues:		
Product	\$ 9,095	\$ 36,000
Service	49,913	13,855
Generation	28,979	27,423
Advanced Technologies	12,945	14,005
Total revenues	100,932	91,283
Costs of revenues:		
Product	7,425	39,159
Service	40,633	13,123
Generation	51,166	42,978
Advanced Technologies	10,779	10,408
Total costs of revenues	110,003	105,668
Gross loss	(9,071)	(14,385)
Operating expenses:		
Administrative and selling expenses	47,637	64,357
Research and development expenses	43,000	22,316

Total costs and expenses	90,637	86,673
Loss from operations	(99,708)	(101,058)
Interest expense	(4,926)	(4,757)
Interest income	11,064	1,025
Gain on extinguishment of finance obligations and debt, net	15,337	-
Other income, net	216	61
Loss before provision for income taxes	(78,017)	(104,729)
Provision for income taxes	(581)	(494)
Net loss	(78,598)	(105,223)
Net loss attributable to noncontrolling interests	(1,394)	(4,968)
Net loss attributable to FuelCell Energy, Inc.	(77,204)	(100,255)
Series B preferred stock dividends	(2,400)	(2,400)
Net loss attributable to common stockholders	\$ (79,604)	\$ (102,655)
Loss per share basic and diluted:		
Net loss per share attributable to common stockholders	\$ (0.19)	\$ (0.27)
Basic and diluted weighted average shares outstanding	409,361,826	375,638,293

	Nine Months Ended July 31,	
	2023	2022
Net loss	\$ (78,598)	\$ (105,223)
Other comprehensive income (loss):		
Foreign currency translation adjustments	132	(326)
Total comprehensive loss	\$ (78,466)	\$ (105,549)
Comprehensive loss attributable to noncontrolling interests	(1,394)	(4,968)
Comprehensive loss attributable to FuelCell Energy, Inc.	\$ (77,072)	\$ (100,581)

See accompanying notes to consolidated financial statements.

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FUELCELL ENERGY, INC.
Consolidated Statements of Changes in Equity
(Unaudited)
(Amounts in thousands, except share amounts)

	Common Stock												Common Stock											
	Accumulated												Accumulated											
	Additional			Other			Total			Additional			Other			Additional			Other			Additional		
	Shares	Amount	Capital	Deficit	Loss	Stock	Deferred	Treasury	Stockholder's	Noncontrolling	Total	Shares	Amount	Capital	Deficit	Loss	Shares	Amount	Capital	Deficit	Loss	Shares	Amount	Capital
Balance,																								
October 31, 2022	405,562,988	\$ 41	\$ 2,094,076	\$ (1,407,973)	\$ (1,752)	\$ (855)	\$ 855	\$ 684,392	\$ 7,105	\$ 691,497														

Balance,													
October 31, 2023													
Common stock issued, non-employee compensation	21,106	—	68	—	—	—	—	68	—	68	44,398	—	51
Stock issued under benefit plans, net of taxes paid upon vesting of restricted stock awards	169,065	—	(314)	—	—	—	—	(314)	—	(314)	1,235,192	—	(926)
Share based compensation	—	—	2,637	—	—	—	—	2,637	—	2,637	—	—	2,876
Preferred dividends	—	—	(800)	—	—	—	—	(800)	—	(800)	—	—	(800)
Effect of foreign currency translation	—	—	—	—	447	—	—	447	—	447	—	—	—
Adjustment for deferred compensation	(21,106)	—	—	—	—	—	(68)	68	—	—	(44,398)	—	—
Reclassification of redeemable non-controlling interest	—	—	—	—	—	—	—	—	—	—	3,030	3,030	—
Distribution to non-controlling interest	—	—	—	—	—	—	—	—	—	—	(106)	(106)	—
Contributions received from sale of noncontrolling interest	—	—	—	2,464	—	—	—	2,464	(2,464)	—	—	—	24,606
Distribution to noncontrolling interests	—	—	—	(21,086)	—	—	—	(21,086)	—	(21,086)	—	—	(44,399)
Balance,													
January 31, 2023	405,732,053	\$ 41	\$2,095,667	\$ (1,426,595)	\$ (1,305)	\$ (923)	\$ 923	\$ 667,808	\$ 7,565	\$675,373			
Sale of common stock, net of fees	949,438	—	2,663	—	—	—	—	2,663	—	2,663			

Stock issued under benefit plans, net of taxes paid upon vesting of restricted stock awards	57,222	—	—	—	—	—	—	—	—	—	—
Share based compensation	—	—	3,194	—	—	—	—	—	3,194	—	3,194
Preferred dividends	—										
Series B	—	—	(800)	—	—	—	—	(800)	—	—	(800)
Effect of foreign currency translation	—	—	—	—	(151)	—	—	(151)	—	—	(151)
Distribution to non- controlling interest	—	—	—	—	—	—	—	—	(143)	(143)	
Net loss attributable to noncontrolling interests	—	—	—	(392)	—	—	—	(392)	392	—	
Net Loss	—	—	—	(33,911)	—	—	—	(33,911)	—	(33,911)	
Balance, April 30, 2023	406,738,713	\$ 41	\$2,100,724	\$ (1,460,898)	\$ (1,456)	\$ (923)	\$ 923	\$ 638,411	\$ 7,814	\$646,225	
Sale of common stock, net of fees	37,931,204	3	83,268	—	—	—	—	83,271	—	83,271	
Common stock issued, non- employee compensation	42,601	—	105	—	—	—	—	105	—	105	
Stock issued under benefit plans, net of taxes paid upon vesting of restricted stock awards	34,164	—	(58)	—	—	—	—	(58)	—	(58)	
Share based compensation	—	—	3,166	—	—	—	—	3,166	—	3,166	
Preferred dividends	—										
Series B	—	—	(800)	—	—	—	—	(800)	—	(800)	
Adjustment for deferred compensation	(42,601)	—	—	—	—	(103)	103	—	—	—	
Effect of foreign currency translation	—	—	—	—	(164)	—	—	(164)	—	(164)	

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FUELCELL ENERGY, INC.
Consolidated Statements of Changes in Equity
(Unaudited)
(Amounts in thousands, except share amounts)

Share based compensation	—	—	1,695	—	—	—	—	1,695	—	1,695
Preferred dividends — Series B	—	—	(800)	—	—	—	—	(800)	—	(800)
Effect of foreign currency translation	—	—	—	—	(149)	—	—	(149)	—	(149)
Adjustment for deferred compensation	(13,002)	—	—	—	—	(68)	68	—	—	—
Reclassification of noncontrolling interest	—	—	—	—	—	—	—	—	12,419	12,419
Return of capital to distribution to noncontrolling interest	—	—	—	—	—	—	—	—	(496)	(496)
Distribution to noncontrolling interest	—	—	—	—	—	—	—	—	(95)	(95)
Net income attributable to redeemable noncontrolling interest	—	—	—	(91)	—	—	—	(91)	91	—
Net loss	—	—	(30,126)	—	—	—	—	(30,126)	—	(30,126)
Balance, April 30, 2022	386,608,869	\$ 39	\$ 2,028,206	\$ (1,336,092)	\$ (1,059)	\$ (718)	\$ 718	\$ 691,094	\$ 6,423	\$ 697,517
Sale of common stock, net of fees	7,814,115	—	27,173	—	—	—	—	27,173	—	27,173
Common stock issued, non-employee compensation	19,594	—	68	—	—	—	—	68	—	68
Stock issued under benefit plan, net of taxes paid upon vesting of restricted stock awards	7,985	—	18	—	—	—	—	18	—	18
Share based compensation	—	—	1,961	—	—	—	—	1,961	—	1,961
Preferred dividends — Series B	—	—	(800)	—	—	—	—	(800)	—	(800)
Effect of foreign currency translation	—	—	—	—	(86)	—	—	(86)	—	(86)
Adjustment for deferred compensation	(19,594)	—	—	—	—	(68)	68	—	—	—
Distribution to noncontrolling interest	—	—	—	—	—	—	—	—	(94)	(94)
Net income attributable to noncontrolling interest	—	—	—	(437)	—	—	—	(437)	437	—
Net loss	—	—	(28,977)	—	—	—	—	(28,977)	—	(28,977)
Balance, July 31, 2022	394,430,969	\$ 39	\$ 2,056,626	\$ (1,365,506)	\$ (1,145)	\$ (786)	\$ 786	\$ 690,014	\$ 6,766	\$ 696,780

	Common Stock									
	Accumulated									
	Additional		Other		Total		Total		Total	
	Shares	Amount	Paid-in Capital	Accumulated Deficit	Comprehensive Loss	Treasury Stock	Deferred Compensation	Stockholders' Equity	Noncontrolling Interests	Stockholders' Equity
Balance, October 31, 2022	405,562,988	\$ 41	\$ 2,094,076	\$ (1,407,973)	\$ (1,752)	\$ (855)	\$ 855	\$ 684,392	\$ 7,105	\$ 691,497
Common stock issued, non-employee compensation	21,106	—	68	—	—	—	—	68	—	68
Stock issued under benefit plans, net of taxes paid upon vesting of restricted stock awards	169,065	—	(314)	—	—	—	—	(314)	—	(314)
Share based compensation	—	—	2,637	—	—	—	—	2,637	—	2,637
Preferred dividends — Series B	—	—	(800)	—	—	—	—	(800)	—	(800)
Effect of foreign currency translation	—	—	—	—	447	—	—	447	—	447
Adjustment for deferred compensation	(21,106)	—	—	—	—	(68)	68	—	—	—
Reclassification of redeemable non-controlling interest	—	—	—	—	—	—	—	—	3,030	3,030
Distribution to non-controlling interest	—	—	—	—	—	—	—	—	(106)	(106)
Net loss attributable to noncontrolling interests	—	—	—	2,464	—	—	—	2,464	(2,464)	—
Net Loss	—	—	—	(21,086)	—	—	—	(21,086)	—	(21,086)
Balance, January 31, 2023	405,732,053	\$ 41	\$ 2,095,667	\$ (1,426,595)	\$ (1,305)	\$ (923)	\$ 923	\$ 667,808	\$ 7,565	\$ 675,373

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FUELCELL ENERGY, INC.
Consolidated Statements of Cash Flows
(Unaudited)
(Amounts in thousands)

	Nine Months Ended July 31,		Three Months Ended January 31,	
	2023	2022	2024	2023
Cash flows from operating activities:				
Net loss	\$ (78,598)	\$ (105,223)	\$ (44,399)	\$ (21,086)
Adjustments to reconcile net loss to net cash used in operating activities:				
Share-based compensation	8,997	5,126	2,876	2,637
Depreciation and amortization	18,659	16,369	8,599	5,405
Gain on extinguishment of finance obligations and debt, net	(15,337)	-	-	-
Non-cash interest expense on finance obligations	2,573	3,155	546	1,052
Unrealized gain on derivative contracts	(479)	(559)	-	-
Unrealized loss on derivative contracts			5,387	-
Operating lease costs	1,159	1,147	355	323
Operating lease payments	(911)	(1,084)	(244)	(301)
Impairment of property, plant and equipment and project assets	2,375	976	-	-
Unrealized foreign currency (gains) losses	(29)	584	-	-
Unrealized foreign currency losses			59	5
Other, net	240	(147)	11	96
(Increase) decrease in operating assets:				
Decrease (increase) in operating assets:				
Accounts receivable	(5,217)	1,983	463	1,672
Unbilled receivables	(25,610)	(190)	(3,048)	(4,965)
Inventories	5,348	(22,783)	(18,403)	(10,267)
Other assets	(12,023)	(6,187)	(1,616)	(1,681)
Increase (decrease) in operating liabilities:				
Decrease in operating liabilities:				
Accounts payable	907	6,254	(6,027)	(1,072)
Accrued liabilities	(4,154)	14,470	(3,990)	(7,125)
Deferred revenue	(22,322)	(1,979)	1,164	(18,070)
Net cash used in operating activities	(124,422)	(88,088)	(58,267)	(53,377)
Cash flows from investing activities:				
Capital expenditures	(28,102)	(15,790)	(10,565)	(7,765)
Project asset expenditures	(35,392)	(23,693)	(7,520)	(2,080)
Maturity of held-to-maturity debt securities	120,850	-	230,375	-
Purchases of held-to-maturity debt securities	(195,849)	-	(125,397)	(74,977)
Net cash used in investing activities	(138,493)	(39,483)		
Net cash provided by (used in) investing activities			86,893	(84,822)

Cash flows from financing activities:				
Repayment of debt and finance obligations	(42,185)	(7,208)	(2,595)	(2,291)
Expenses related to common stock issued for stock plans	56	47	68	21
Contributions received from sale of noncontrolling interest	-	11,923	25,122	-
Proceeds from the issuance of debt	80,500	-		
Distribution to noncontrolling interest	(399)	(189)	(236)	(106)
Payments for taxes related to net share settlement of equity awards	(428)	(287)	(995)	(337)
Payment for debt issuance costs	(2,917)	-		
Common stock issuance, net of fees	85,934	145,437		
Payment of preferred dividends	(2,400)	(2,400)	(800)	(800)
Net cash provided by financing activities	118,161	147,323	20,564	(3,513)
Net cash provided by (used in) financing activities				
Effects on cash from changes in foreign currency rates	132	(326)	33	447
Net (decrease) increase in cash, cash equivalents and restricted cash	(144,622)	19,426	49,223	(141,265)
Net increase (decrease) in cash, cash equivalents and restricted cash				
Cash, cash equivalents and restricted cash-beginning of period	481,044	460,212	299,576	481,044
Cash, cash equivalents and restricted cash-end of period	\$ 336,422	\$ 479,638	\$ 348,799	\$ 339,779
Reconciliation of cash, cash equivalents and restricted cash				
Cash and cash equivalents, unrestricted			\$ 297,466	\$ 315,168
Restricted cash and cash equivalents - short-term			5,957	4,456
Restricted cash and cash equivalents - long-term			45,376	20,155
Total cash, cash equivalents and restricted cash			\$ 348,799	\$ 339,779
Supplemental cash flow disclosures:				
Cash interest paid	\$ 1,474	\$ 1,193	\$ 1,638	\$ 343
Noncash financing and investing activity:				
Recognition of operating lease liabilities	2,147	-	-	2,005
Recognition of operating lease right-of-use assets	2,147	-	-	2,005
Noncash reclassifications from inventory to project assets	-	7,699	4,586	-
Noncash reclassification from inventory to fixed assets			1,552	
Noncash reclassifications from other assets to project assets	-		2,375	
Accrued purchase of fixed assets, cash to be paid in subsequent period	1,469		3,203	
Accrued purchase of project assets, cash to be paid in subsequent period	2,671		6,498	
Accrued purchases of fixed assets, cash to be paid in subsequent period			1,162	3,055
Accrued purchases of project assets, cash to be paid in subsequent period			1,563	5,250

See accompanying notes to consolidated financial statements.

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FUELCELL ENERGY, INC.
Notes to Consolidated Financial Statements
(Unaudited)
(Tabular amounts in thousands, except share and per share amounts)

Note 1. Nature of Business and Basis of Presentation

Headquartered in Danbury, Connecticut, FuelCell Energy, Inc. (together with its subsidiaries, the "Company," "FuelCell Energy," "we," "us," or "our") **has leveraged five decades of research and development to become** is a global leader in delivering environmentally responsible distributed baseload **power** energy platform solutions through our proprietary fuel cell technology. **Our current** Today, we offer commercial technology **that** produces **clean** electricity, heat, **clean** hydrogen, and water **while separating** and is also capable of recovering and capturing carbon for utilization and/or sequestration, depending on **the** product configuration and application. We **also** continue to invest in **developing** product development and commercializing **future** technologies **that** are expected to add new capabilities to our platforms' abilities to deliver hydrogen and long duration hydrogen-based energy storage through our solid oxide technologies, as well as further enhance our existing platforms' carbon capture solutions.

FuelCell Energy is **a global leader in** focused on advancing sustainable clean energy technologies that address some of the world's most critical challenges around energy access, security, **resilience, reliability, affordability**, safety and environmental stewardship. As a leading global manufacturer of proprietary fuel cell technology platforms, FuelCell Energy is uniquely positioned to serve customers worldwide with sustainable products and solutions for industrial and commercial businesses, utilities, governments, **municipalities**, and **municipalities** **communities**.

Basis of Presentation

The accompanying unaudited consolidated financial statements have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission ("SEC") regarding interim financial information. Accordingly, they do not contain all of the information and footnotes required by accounting principles generally accepted in the United States of America ("GAAP") for complete financial statements. In the opinion of management, all normal and recurring adjustments necessary to fairly present the Company's financial position **as of January 31, 2024 and October 31, 2023** and results of operations as of and for the three **and nine** months ended **July 31, 2023** **January 31, 2024** and **2022** **2023** have been included. All intercompany accounts and transactions have been eliminated.

Certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted. The balance sheet as of **October 31, 2022** **October 31, 2023** has been derived from the audited financial statements at that date, but it does not include all of the information and footnotes required by GAAP for complete financial statements. These financial statements should be read in conjunction with the Company's financial statements and notes thereto for the fiscal year ended **October 31, 2022** **October 31, 2023**, which are contained in the Company's Annual Report on Form 10-K previously filed with the SEC. The results of operations for the interim periods presented are not necessarily indicative of results that may be expected for any other interim period or for the full fiscal year.

Certain reclassifications have been made to the prior year amounts to conform to the presentation for the three and nine months ended July 31, 2023. Interest income for the three and nine months ended July 31, 2022, which was previously included within Other income, net has been reclassified to Interest income in the Consolidated Statements of Operations and Comprehensive Loss.

Principles of Consolidation

The unaudited consolidated financial statements reflect our accounts and operations and those of our subsidiaries in which we have a controlling financial interest. We use a qualitative approach in assessing the consolidation requirement for each of our variable interest entities ("VIEs"), which are tax equity partnerships further described in Note 3, "Tax Equity Financings." This approach focuses on determining whether we have the power to direct those activities of the tax equity partnerships that most significantly affect their economic performance and whether we have the obligation to absorb losses, or the right to receive benefits, that could potentially be significant to the tax equity partnerships. For all periods presented, we have determined that we are the primary beneficiary in all of our tax equity partnerships. We evaluate our tax equity partnerships on an ongoing basis to ensure that we continue to be the primary beneficiary.

Use of Estimates

The preparation of financial statements and related disclosures in conformity with GAAP 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. Estimates are used in accounting for, among other things, revenue recognition, lease right-of-use assets and liabilities, **contract loss accruals**, excess, slow-moving and obsolete inventories, product warranty accruals, loss accruals on service agreements, share-based compensation expense, allowance for doubtful accounts, depreciation and

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amortization, impairment of goodwill and in-process research and development intangible assets, impairment of long-lived assets (including project assets), **valuation of derivatives**, 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. Due to the inherent uncertainty involved in making estimates, actual results in future periods may differ from those estimates.

Liquidity

Our principal sources of cash have been proceeds from the sale of our products and projects, electricity generation revenues, research and development and service agreements with third parties, sales of our common stock through public equity offerings, and proceeds from debt, project financing and tax monetization transactions. We have utilized this cash to accelerate the commercialization of our solid oxide platforms, develop new capabilities to separate and capture carbon, develop and construct project assets, invest in capital improvements and expansion of our operations, perform research and development, pay down existing outstanding indebtedness, and meet our other cash and liquidity needs.

As of **July 31, 2023** **January 31, 2024**, unrestricted cash and cash equivalents totaled **\$303.7 million** **\$297.5 million** compared to **\$458.1 million** **\$250.0 million** as of **October 31, 2022** **October 31, 2023**. During the **nine** **year ended October 31, 2023** and the **three** **months ended July 31, 2023** **January 31, 2024**, the Company invested in United States (U.S.) Treasury **Securities**, **Securities**, all of which had matured as of **January 31, 2024**. The amortized cost of the U.S. Treasury Securities outstanding totaled **\$77.4 million** as of **July 31, 2023** compared to **\$0** as of **October 31, 2022** **January 31, 2024** compared to **\$103.8** as of **October 31, 2023** and is classified as Investments - short-term on the Consolidated Balance Sheets.

The **maturity dates for the outstanding U.S. Treasury Securities range** Company, from **August 8, 2023** time to **October 26, 2023**.

On July 12, 2022, the Company entered into an time, has offered and sold shares under its Open Market Sale Agreement with Jefferies LLC, B. Riley Securities, Inc. (as defined in Note 11. "Stockholders' Equity"). During the quarter ended January 31, 2024, Barclays Capital Inc., BMO Capital Markets Corp., BofA Securities, Inc., Canaccord Genuity LLC, Citigroup Global Markets Inc., J.P. Morgan Securities LLC and Loop Capital Markets LLC (the "Open Market Sale Agreement") with respect to an at the market offering program under which the Company may, from time to time, offer and sell up to 95.0 million shares of the Company's common stock. From the date of the Open Market Sale Agreement through July 31, 2023, the Company sold approximately 60.8 million shares no sales were made under the Open Market Sale Agreement at an average sale price of \$2.67 per share. Of this 60.8 million shares, approximately 57.4 million shares were issued and settled on or prior to July 31, 2023 resulting in gross proceeds of approximately \$155.0 million before deducting sales commissions and fees. During the nine months ended July 31, 2023, approximately 42.3 million shares were sold under the Open Market Sale Agreement at an average sale price of \$2.26 per share. Of this 42.3 million shares, approximately 38.9 million shares were issued and settled during the nine month period ended July 31, 2023 resulting in gross proceeds of approximately \$88.0 million before deducting sales commissions and fees. The balance of approximately 3.4 million shares was settled subsequent to July 31, 2023, resulting in gross proceeds of approximately \$7.4 million before deducting sales commissions and fees. Subsequent to the end of the quarter, the Company sold approximately 2.0 million shares of its common stock under the Open Market Sale Agreement at an average price of \$2.14 per share, resulting in gross proceeds of approximately \$4.3 million before deducting sales commissions and fees.

As of the date of this report, approximately 32.2 million shares are available for issuance under the Open Market Sale Agreement. The Company currently intends to use the net proceeds from this offering to accelerate the development and commercialization of its product

platforms (including, but not limited to, its solid oxide and carbon capture platforms), for project development, market development, and internal research and development, to invest in capacity expansion for solid oxide and carbonate fuel cell manufacturing, and for project financing, working capital support, and general corporate purposes. The Company may also use the net proceeds from this offering to invest in joint ventures, acquisitions, and strategic growth investments and to acquire, license or invest in products, technologies or businesses that complement its business. See Note 11. "Stockholders' Equity" for additional information regarding the Open Market Sale Agreement.

During the ~~third~~ fourth quarter of fiscal year 2023, the Company entered into closed on a project ~~tax equity~~ financing facility (which is referred to a transaction with Franklin Park 2023 FCE Tax Equity Fund, LLC ("Franklin Park"), a subsidiary of Franklin Park Infrastructure, LLC, for two fuel cell power plant installations -- the 14.0 MW Derby Fuel Cell Project and the 2.8 MW SCEF Fuel Cell Project, both located in Derby, Connecticut (collectively, the "Derby Projects"). Franklin Park's tax equity commitment with respect to as the ("OpCo Financing Facility") Derby Projects totals \$30.2 million. Of this amount, approximately \$9.1 million was received on October 31, 2023 and the remaining approximately \$21.1 million was received during the three months ended January 31, 2024. In connection with the initial closing of this tax equity financing transaction in fiscal year 2023, the amount Company paid closing costs of \$80.5 million approximately \$1.8 million, which was partially used included appraisal fees, title insurance expenses and legal and consulting fees.

During the three months ended January 31, 2024, the Company completed the Technical Improvement Plan to extinguish certain existing

[Table bring the Groton Project \(defined elsewhere herein\) to its rated capacity and the Groton Project reached its design rated output of](#)
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debt, to partially repay other existing debt, 7.4 MW. The Company achieved all conditions precedent required for the first annual funding from East West Bank and, to repurchase project assets under sale-leaseback transactions, resulting in \$46.1 million of net proceeds. See Note 15. "Debt" for additional information regarding as a result, the OpCo Financing Facility, Company received a \$4.0 million contribution during the three months ended January 31, 2024 which is recorded as noncontrolling interest on the Consolidated Balance Sheets.

We believe that our unrestricted cash and cash equivalents, expected receipts from our contracted backlog funds received upon the maturity of U.S. Treasury Securities, and release of short-term restricted cash less expected disbursements over the next twelve months will be sufficient to allow the Company to meet its obligations for at least one year from the date of issuance of these financial statements.

To date, we have not achieved profitable operations or sustained positive cash flow from operations. The Company's future liquidity, for the remainder of fiscal year 2023/2024 and in the long-term, will depend on its ability to (i) timely complete current projects in process within budget, (ii) increase cash flows from its generation operating portfolio, including by meeting conditions required to timely commence operation of new projects, operating its generation operating portfolio in compliance with minimum performance guarantees and operating its generation operating portfolio in accordance with revenue expectations, (iii) obtain financing for project construction and manufacturing expansion, (iv) obtain permanent financing for its projects once constructed, (v) increase order and contract volumes, which would lead to additional product sales, service agreements and generation revenues, (vi) obtain funding for and receive payment for research and development under current and future Advanced Technologies contracts, (vii) successfully commercialize its solid oxide, hydrogen and carbon capture platforms, (viii) implement capacity expansion for solid oxide product manufacturing, (ix) implement the product cost reductions necessary to achieve profitable operations, (x) manage working capital and the Company's unrestricted cash balance and (xi) access the capital markets to raise funds through the sale of debt and equity securities, convertible notes, and other equity-linked instruments.

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We are continually assessing different means by which to accelerate the Company's growth, enter new markets, commercialize new products, and enable capacity expansion. Therefore, from time to time, the Company may consider and enter into agreements for one or more of the following: negotiated financial transactions, minority investments, collaborative ventures, technology sharing, transfer or other technology license arrangements, joint ventures, partnerships, acquisitions or other business transactions for the purpose(s) of geographic or manufacturing expansion and/or new product or technology development and commercialization, including hydrogen production through our carbonate and solid oxide platforms and storage and carbon capture, sequestration and utilization technologies.

Our business model requires substantial outside financing arrangements and satisfaction of the conditions of such arrangements to construct and deploy our projects to facilitate the growth of our business. The Company has invested capital raised from sales of its common stock to build out its project portfolio. The Company has also utilized and expects to continue to utilize a combination of long-term debt and tax equity financing (e.g., sale-leaseback transactions, partnership flip transactions and the monetization and/or transfer of eligible investment and production tax credits) to finance its project asset portfolio as these projects commence commercial operations, particularly in light of the passage of the Inflation Reduction Act in August 2022. The Company may also seek to undertake private placements of debt securities of a portfolio of assets to finance its project asset portfolio. The proceeds of any such financing, if obtained, may allow the Company to reinvest capital back into the business and to fund other projects. We may also seek to obtain additional financing in both the debt and equity markets in the future. If financing is not available to us on acceptable terms if and when needed, or on terms acceptable to us or our lenders, if we do not satisfy the conditions of our financing arrangements, if we spend more than the financing approved for projects, if project costs exceed an amount that the Company can finance, or if we do not generate sufficient revenues or obtain capital sufficient for our corporate needs, we may be required to reduce or slow planned spending, reduce staffing, sell assets, seek alternative financing and take other measures, any of which could have a material adverse effect on our financial condition and operations.

Note 2. Recent Accounting Pronouncements

Recently Adopted Accounting Guidance

There is no recently adopted accounting guidance.

Recent Accounting Guidance Not Yet Effective

There In November 2023, the Financial Accounting Standards Board ("FASB") issued guidance to improve reportable segment disclosure requirements, primarily through enhanced disclosures about significant segment expenses. In addition, the guidance enhances interim disclosure requirements, clarifies circumstances in which an entity can disclose multiple segment measures of profit or loss, provides new segment disclosure requirements for entities with a single reportable segment and contains other disclosure requirements. The purpose of the guidance is no recent accounting to enable investors to better understand an entity's overall performance and assess potential future cash flows. The guidance is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. We are currently evaluating the impact that is not yet effective, the new guidance will have on our consolidated financial statements.

In December 2023, the FASB issued guidance to enhance income tax disclosures by providing information to better assess how an entity's operations, related tax risks, tax planning and operational opportunities affect its tax rate and prospects for future cash flows. Additional disclosures will be required to the annual effective tax rate reconciliation including specific categories and further disaggregated reconciling items that meet the quantitative threshold. Additionally, disclosures will be required relating to income tax expense and payments made to federal, state, local and foreign jurisdictions. This guidance is effective for fiscal years and interim periods beginning after December 15, 2024. We are currently evaluating the impact that the new guidance will have on our consolidated financial statements.

Note 3. Tax Equity Financings

Derby Tax Equity Financing Transaction

Since the Derby Projects became operational during the three months ended January 31, 2024, we have begun to allocate profits and losses to noncontrolling interests under the hypothetical liquidation at book value ("HLBV") method. For the three months ended January 31, 2024, the net loss attributable to noncontrolling interests totaled \$20.7 million. There were no amounts allocated to noncontrolling interest for the three months ended January 31, 2023 for Derby Fuel Cell Holdco, LLC (the partnership that acquired the equity interests in the project company that owns the Derby Projects) because the

Note 3. Tax Equity Financings

Derby Projects were not yet operational at that time. As such, the Company had not yet allocated profits or losses to the noncontrolling interest under the HLBV method. During the three months ended January 31, 2024, the Company made priority return distributions to Franklin Park of \$0.1 million.

Groton Tax Equity Financing Transaction

The Company closed on a tax equity financing transaction in August 2021 with East West Bancorp, Inc. ("East West Bank") for the 7.4 MW fuel cell project (the "Groton Project") located on the U.S. Navy Submarine Base in Groton, CT. East West Bank's tax equity commitment totals \$15 million.

This transaction was structured as a "partnership flip", which is a structure commonly used by tax equity investors in For the financing of renewable energy projects. Under this partnership flip structure, a partnership, in this case three months ended January 31, 2024 and 2023, the net loss attributable to noncontrolling interests for Groton Station FuelCell Holdco, LLC (the "Groton Partnership"), was organized to acquire from FuelCell Energy Finance II, LLC, a wholly-owned subsidiary of partnership that acquired the Company, all outstanding equity interests in Groton Station Fuel Cell, LLC (the "Groton Project Company") which in turn the project company that owns the Groton Project Project totaled \$3.6 million and is the party to the power purchase agreement and all project agreements. At the closing of the transaction, the Groton Partnership is owned by East West Bank, holding Class A Units, and FuelCell Energy Finance Holdco, LLC, a subsidiary of FuelCell Energy Finance, LLC, holding Class B Units. The acquisition of the Groton Project Company by the Groton Partnership was funded in part by an initial draw from East West Bank and funds contributed downstream to the Groton Partnership by the Company. The initial closing occurred on August 4, 2021 \$2.9 million, upon the satisfaction of certain conditions precedent (including the receipt of an appraisal and confirmation that the Groton Project would be eligible for the investment tax credit under Section 48 of the Internal Revenue Code of 1986, as amended). In connection with the initial closing, the Company drew down \$3.0 million, of which approximately \$0.8 million was used to pay closing costs including appraisal fees, title insurance expenses and legal and consulting fees. Under the original terms of the Company's agreement with East West Bank, the Company would have been eligible to draw the remaining amount of the commitment, approximately \$12 million, once the Groton Project achieved commercial operation. In addition, under the original terms of the Company's agreement with East West Bank, the Groton Project had a required commercial operations deadline of October 18, 2021. The significance of the commercial operations deadline is that, if commercial operations were not achieved by such deadline, East West Bank would have the option to require an amount equal to 101% of its investment to be returned. East West Bank granted several extensions of the commercial operations deadline, which collectively extended the deadline to May 15, 2022, in exchange for the Company's agreement to pay fees of \$0.4 million in the aggregate.

On July 7, 2022, the Company and East West Bank amended their tax equity financing agreement and extended the commercial operations deadline to September 30, 2022. In addition, in the July 7, 2022 amendment to the tax equity financing agreement, the terms of East West Bank's remaining investment commitment of \$12.0 million were modified such that East West Bank will contribute \$4.0 million on each of the first, second and third anniversaries of the Groton Project achieving commercial operations, rather than contributing the full \$12.0 million when the Groton Project achieved commercial operations. Such contributions are subject to certain customer conditions precedent, including a third-party certification by an independent engineer that the plant is operating in conformance with the amended and restated power purchase agreement. When such contributions are made by East West Bank, the funds will be distributed upstream to the Company, as a reimbursement of prior construction costs incurred by the Company. In conjunction with this amendment, the Company agreed to pay aggregate fees of \$0.5 million (which are inclusive of the fees from the previous extensions described above), which were payable by the Company upon commencement of commercial operations of the plant.

On October 4, 2022, the Company and East West Bank further amended their tax equity financing agreement to extend the deadline by which commercial operations were to be achieved at the Groton Project from September 30, 2022 to November 30, 2022. In addition, modifications to the Groton Project documents between Connecticut Municipal Electric Energy Cooperative ("CMEEC") and the Company as a result of the agreement between those parties to commence operations at less than 7.4 MW required the approval of East West Bank as part of East West Bank's rights under the agreement between East West Bank and the Company. On December 16, 2022, the Company and CMEEC agreed that, for all purposes, the commercial operations date had occurred, and, accordingly, East West Bank no longer had a right to have its investment returned as a result of the Company's failure to achieve commercial operations in a timely fashion, and this investment became a non-redeemable noncontrolling interest as of December 16, 2022. In addition, on December 16, 2022, the Company paid the aggregate fees of \$0.5 million described above to East West Bank.

On December 16, 2022, the Company declared and, per the terms of the Amended and Restated Power Purchase Agreement between the Company and CMEEC entered into on that date (the "Amended and Restated PPA"), CMEEC agreed that the Groton Project is commercially operational at 6 MW. As of December 16, 2022, the Groton Project is reported as a part of the Company's generation operating portfolio. The Amended and Restated PPA allows the Company

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to operate the plants at a reduced output of approximately 6 MW while a Technical Improvement Plan ("TIP") is implemented over the next year with the goal of bringing the platform to its rated capacity of 7.4 MW by December 31, 2023. In conjunction with entering into the Amended and Restated PPA, the Navy also provided its authorization to proceed with commercial operations at 6 MW. The Company paid CMEEC an amendment fee of \$1.2 million and is incurring and will continue to incur performance guarantee fees under the Amended and Restated PPA as a result of operating at an output below 7.4 MW during implementation of the TIP. Although the Company believes it will successfully implement the TIP and bring the plants up to their nominal output of 7.4 MW by December 31, 2023, no assurance can be provided that such work will be successful. In the event that the plants do not reach an output of 7.4 MW by December 31, 2023, the Amended and Restated PPA will continue in effect, and the Company will be subject to ongoing performance guarantee fees as set forth in the Amended and Restated PPA.

With the declaration of commercial operations, East West Bank's investment in the project was reclassified, as of December 16, 2022, from a redeemable noncontrolling interest to non-redeemable noncontrolling interests within the Total equity section of the Consolidated Balance Sheets.

Under most partnership flip structures, tax equity investors agree to receive a minimum target rate of return, typically on an after-tax basis. Prior to receiving a contractual rate of return or a date specified in the contractual arrangements, East West Bank will receive substantially all of the non-cash value attributable to the Groton Project, which includes accelerated depreciation and Section 48(a) investment tax credits; however, the Company will receive a majority of the cash distributions (based on the operating income of the Groton Project), which are paid quarterly. After East West Bank receives its contractual rate of return, the Company will receive approximately 95% of the cash and tax allocations. The Company (through a separate wholly owned entity) entered into a back leverage debt financing transaction subsequent to July 31, 2023 and will use the cash distributions from the Groton Partnership to service the debt (refer to Note. 18. "Subsequent Events" for additional information).

We have determined we are the primary beneficiary in the Groton Partnership for accounting purposes as a Variable Interest Entity ("VIE") under GAAP. We have considered the provisions within the financing-related agreements (including the limited liability company agreement for the Groton Partnership) which grant us power to manage and make decisions affecting the operations of the Groton Partnership. We consider the rights granted to East West Bank under the agreements to be more protective in nature than participatory. Therefore, we have determined under the power and benefits criterion of Accounting Standards Codification ("ASC") 810, *Consolidations* that we are the primary beneficiary of the Groton Partnership. As the primary beneficiary, we consolidate the financial position, results of operations and cash flows of the Groton Partnership in our consolidated financial statements, and all intercompany balances and transactions between us and the Groton Partnership are eliminated. We recognized East West Bank's share of the net assets of the Groton Partnership as redeemable noncontrolling interests in our Consolidated Balance Sheets. East West Bank's share of the net assets is considered as a redeemable noncontrolling interest due to the conditional withdrawal right under which, if events outside the control of the Company occur, East West Bank has the ability to force the Company to redeem its interest in the Groton Partnership. The income or loss allocations reflected in our Consolidated Statements of Operations and Comprehensive Loss may create volatility in our reported results of operations, including potentially changing net loss attributable to stockholders to net income attributable to stockholders, or vice versa, from quarter to quarter. Since the Groton Project became operational during the three months ended January 31, 2023, we have begun to allocate profits and losses to noncontrolling interests under the hypothetical liquidation at book value ("HLBV") method. HLBV is a balance sheet-oriented approach for applying the equity method of accounting when there is a complex structure, such as the partnership flip structure. For the three and nine months ended July 31, 2023, the net income (loss) attributable to noncontrolling interests totaled \$0.1 million and (\$2.8) million, respectively. There were no amounts allocated to noncontrolling interest for the three and nine months ended July 31, 2022 for the Groton Partnership.

Yaphank Tax Equity Financing Transaction

The Company closed on a tax equity financing transaction in November 2021 with Renewable Energy Investors, LLC ("REI"), a subsidiary of Franklin Park Infrastructure, LLC, for the 7.4 MW fuel cell project (the "LIPA Yaphank Project") located in Yaphank Long Island. REI's tax equity commitment totaled \$12.4 million.

This transaction was structured as a "partnership flip," which is a structure commonly used by tax equity investors in the financing of renewable energy projects. Under this partnership flip structure, a partnership, in this case YTBFC Holdco, LLC (the "Yaphank Partnership"), was organized to acquire from FuelCell Energy Finance II, LLC, a wholly-owned subsidiary of the Company, all outstanding equity interests in Yaphank Fuel Cell Park, LLC, which in turn owns the LIPA

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Yaphank Project and is the party to the power purchase agreement and all project agreements. REI holds Class A Units in the Yaphank Partnership and a subsidiary of the Company holds the Class B Units. The initial funding occurred on December 13, 2021. In connection with the initial closing, the Company was able to draw down approximately \$3.2 million, of which approximately \$0.4 million was used to pay closing costs, including title insurance expenses and legal and consulting fees. The Company drew down the remaining amount of the commitment, approximately \$9.2 million, in December 2021 and January 2022, after the LIPA Yaphank Project achieved commercial operation. These proceeds were partially offset by legal and advisory fees of approximately \$0.4 million. Units.

The Company determined during the second quarter of fiscal year 2022 that there was an overpayment by REI. During each of the Class A Member Capital Contribution of \$0.5 million three month periods ended January 31, 2024 and as such the Company refunded this amount back to REI, reducing the REI tax equity commitment to \$11.9 million. During the three months ended July 31, 2023 and 2022, 2023, the Company made priority return distributions to REI of \$0.2 million and \$0.1 million, respectively. During the nine months ended July 31, 2023 and 2022, the Company made priority return distributions to REI of \$0.4 million and \$0.2 million, respectively.

Under a partnership flip structure, tax equity investors agree to receive a minimum target rate of return, typically on an after-tax basis. Prior to receiving a contractual rate of return or a date specified in the contractual arrangements, REI will receive substantially all of the non-cash value attributable to the LIPA Yaphank Project, which includes accelerated depreciation and Section 48(a) investment tax credits; however, the Company will receive a majority of the cash distributions (based on the operating income of the LIPA Yaphank Project), which are paid quarterly. After REI receives its contractual rate of return, the Company will receive approximately 95% of the cash and tax allocations. The Company may enter into a back leverage debt financing transaction and use the cash distributions from the Yaphank Partnership to service the debt.

Under this partnership flip structure, after the fifth anniversary following achievement of commercial operations, we have an option to acquire all of the equity interests that REI holds in the Yaphank Partnership starting after REI receives its contractual rate of return (the anticipated "flip" date) after the LIPA Yaphank Project is operational. If we exercise this option, we will be required to pay the greater of the following: (i) the fair market value of REI's equity interest at the time the option is exercised or (ii) an amount equal to 10.3% of REI's capital contributions. This option payment is to be grossed up for federal taxes if it exceeds the tax basis of the Yaphank Partnership Class A Units.

We are the primary beneficiary in the Yaphank Partnership for accounting purposes as a VIE under GAAP. We have considered the provisions within the financing-related agreements (including the limited liability company agreement for the Yaphank Partnership) which grant us power to manage and make decisions affecting the operations of the Yaphank Partnership. We consider the rights granted to REI under the agreements to be more protective in nature rather than participatory. Therefore, we have determined under the power and benefits criterion of ASC 810, *Consolidations* that we are the primary beneficiary of the Yaphank Partnership. As the primary beneficiary, we consolidate the financial position, results of operations and cash flows of the Yaphank Partnership in our consolidated financial statements, and all intercompany balances and transactions between us and the Yaphank Partnership are eliminated. We recognized REI's share of the net assets of the Yaphank Partnership as noncontrolling interests in our Consolidated Balance Sheets. The income or loss allocations reflected in our Consolidated Statements of Operations and Comprehensive Loss may create volatility in our reported results of operations, including potentially changing net loss attributable to stockholders to net income attributable to stockholders, or vice versa, from quarter to quarter. We

allocate profits and losses to REI's noncontrolling interest under the HLBV method. HLBV is a balance sheet-oriented approach for applying the equity method of accounting when there is a complex structure, such as the partnership flip structure. For the three months ended July 31, 2023 January 31, 2024 and 2022, net (loss) income attributable to noncontrolling interest for the Yaphank Partnership totaled \$0.6 million (\$0.3) million and \$0.4 million, respectively, and the net income (loss) attributable to noncontrolling interest for the nine months ended July 31, 2023 and 2022 totaled \$1.4 million and \$(5.0) million, respectively.

Note 4. Revenue Recognition

Revenue Recognition – Groton Project PPA

The Groton Project Amended and Restated PPA that was entered into on December 16, 2022 (as discussed further in Note 3, "Tax Equity Financings") has resulted in revenue recognition to be accounted for in accordance with ASC 606, "Revenue from Contracts with Customers," whereas this PPA was previously accounted for under ASC 842, "Leases." The Company's performance obligation is to provide 100% of the electricity output to the customer. The promise to provide electricity over the term of the PPA represents a single performance obligation, as it is a promise to transfer a

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series of distinct goods or services that are substantially the same and that have the same pattern of transfer to the customer. Revenue is recognized over time as the customer simultaneously receives and consumes the benefits provided by the Company, and the Company satisfies its performance obligation. Revenue is recognized based on the output method as there is a directly observable output to the customer-electricity delivered to the customer and immediately consumed.

Contract Balances

Contract assets as of July 31, 2023 January 31, 2024 and October 31, 2022 October 31, 2023 were \$46.1 million \$45.1 million (\$27.1 22.7 million long-term) and \$20.7 million \$42.1 million (\$9.7 25.8 million long-term), respectively. The contract assets relate to the Company's rights to consideration for work performed completed but not yet billed. These amounts are included on a separate line item as Unbilled receivables, and balances expected to be billed later than one year from the balance sheet date are included within Other assets on the accompanying Consolidated Balance Sheets. We bill customers for power platform and power platform component sales based on certain contractual milestones being reached. We bill service agreements and PPAs based on the contract price and billing terms of the contracts. Generally, our Advanced Technologies contracts are billed based on actual revenues recorded, typically in the subsequent month. Some Advanced Technologies contracts are billed based on contractual milestones or costs incurred. The net change in contract assets represents amounts recognized as revenue offset by customer billings.

Contract liabilities as of July 31, 2023 January 31, 2024 and October 31, 2022 October 31, 2023 were \$3.1 million \$4.3 million and \$25.4 million \$3.1 million, respectively. These amounts are included on a separate line item as Deferred revenue, and balances expected to be recognized as revenue later than one year from the balance sheet date are included within Long term deferred revenue and customer deposits. The contract liabilities relate to the advance billings to customers for services that will be recognized over time.

time and in some instances for deferred revenue relating to variable consideration for previously sold products. The net change in contract liabilities represents customer billings offset by revenue recognized.

Product Revenue Recognition Consideration Payable to a Customer

As previously disclosed, of October 31, 2023, the Company entered into a Settlement Agreement (the "Settlement Agreement" had recorded \$6.3 million (\$6.0 million long-term) as consideration payable to Toyota Motor North America ("Toyota"), which is included within Accrued liabilities and Long-term debt and other liabilities on the accompanying Consolidated Balance Sheets. The Company received payment for the sale of an investment tax credit with POSCO Energy Co., Ltd. ("POSCO Energy") and its subsidiary, Korea Fuel Cell Co., Ltd. ("KFC"), in fiscal year 2022. The Settlement Agreement included an option to purchase an additional 14 modules (in addition respect to the 20 modules which were purchased by KFC Toyota project at the Port of Long Beach during fiscal the year 2022). The option was not exercised as ended October

31, 2023 and the net amount of the expiration date of December 31, 2022 and, \$6.3 million will be recorded as a result, the Company recognized \$9.1 million of product reduction to revenue during the nine months ended July 31, 2023 period of measurement, which represents is the consideration allocated to 20-year term of the material right had hydrogen production and power purchase agreement between Toyota and the option been exercised. Company ("Toyota HPPA").

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Advanced Technologies Revenue – EMTEC Joint Development Agreement and Rotterdam Pilot Project Purchase Order

On December 19, 2022, In May 2023, the Company and entered into a second letter agreement with ExxonMobil Technology and Engineering Company (formerly known as ExxonMobil Research and Engineering Company) ("EMTEC") entered into Amendment No. 3 to the Joint Development Agreement between the Company and EMTEC, effective as of December 1, 2022 (such amendment, "Amendment No. 3" and such agreement, as amended from time to time, the "EMTEC Joint Development Agreement"). In Amendment No. 3, the Company and EMTEC agreed to further extend the term of the EMTEC Joint Development Agreement such that it will end on August 31, 2023 (unless terminated earlier) and to further increase the maximum amount of contract consideration to be reimbursed by EMTEC from \$50.0 million to \$60.0 million. Amendment No. 3 (i) allowed for continuation of research intended to enable the parties to finalize data collection in support of the project gate decision to use the developed technology in a Company fuel cell module demonstration for capturing carbon at ExxonMobil's Rotterdam facility, (ii) allowed for the continuation of the development, engineering and mechanical derisking of the Generation 2 Technology fuel cell module prototype, and (iii) allowed for studying the manufacturing scale-up and cost reduction of a commercial Generation 2 Technology fuel cell carbon capture facility.

During the nine months ended July 31, 2022, the Company achieved the first technical milestone under the EMTEC Joint Development Agreement and received payment of \$5.0 million. At the time, the Company did not recognize revenue in connection with this milestone achievement as a result of its agreement with EMTEC to either make a \$5.0 million investment in a demonstration of a Company fuel cell module for capturing carbon at ExxonMobil's Rotterdam refinery located in Rotterdam, Netherlands (the "Rotterdam Project") or discount EMTEC's purchase of the Company's fuel cell module and detailed engineering design for the Rotterdam Project by \$5.0 million, should the Company enter into a contract with EMTEC to proceed with the Rotterdam Project. In May 2023, the Company entered into a letter agreement with EMTEC, pursuant to which the parties agreed that the conditions to the Company's agreement to invest in the future demonstration of the technology for capturing carbon at an ExxonMobil refinery located in Rotterdam, Project Netherlands (such demonstration, the "Rotterdam Project") were met in April 2023 and, as a result, the Company will recognize \$2.5 million of the \$5.0 million milestone payment received in fiscal year 2022 under the Company's Joint Development Agreement with EMTEC as revenue across future deliverables to EMTEC. Of this \$2.5 million, the Company recognized revenue of \$0.2 million during the three and nine months ended July 31, 2023 \$0.5 million through January 31, 2024. The other \$2.5 million

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of the \$5.0 million milestone payment received under the EMTEC Joint Development Agreement in fiscal year 2022 will be under the Company's Joint Development Agreement with EMTEC was applied during fiscal year 2023 to discount EMTEC's purchase of the Company's fuel cell module and detailed engineering design for the Rotterdam Project. EMTEC has not yet made the project gate decision to proceed with the Rotterdam Project. A final investment decision on the Rotterdam project is expected later this calendar year.

See Note 18. "Subsequent Events" On January 31, 2024, the Company received a purchase order valued at \$11.6 million from Esso Nederland B.V. ("Esso"), an affiliate of Exxon Mobil Corporation and EMTEC, for additional information regarding fuel cell modules as well as engineering, procurement, fabrication, testing and delivery services required for the fourth amendment to construction and implementation of the EMTEC Joint Development Agreement modular point source carbon capture pilot plant at the Esso Rotterdam Manufacturing Complex.

Remaining Performance Obligations

Remaining performance obligations are the aggregate amount of total contract transaction price that is unsatisfied or partially unsatisfied. As of July 31, 2023 January 31, 2024, the Company's total remaining performance obligations were: \$63.8 million \$140.4 million for service agreements \$64.5 million (expected to be recognized as revenue over approximately three to fifteen years which is based on the remaining term of the service agreements), \$346.0 million for a generation power purchase agreements ("PPAs") (expected to be recognized as revenue over approximately nineteen to twenty years based on the PPA and \$11.6 million terms remaining), \$18.3 million for Advanced Technologies contracts in the aggregate. Service revenue in periods in which there are no module exchanges is expected (expected to be relatively consistent from period to period, whereas module exchanges will result in an increase in revenue when exchanges occur recognized within approximately two years) and \$0 for product purchase agreements.

Note 5. Investments – Short-Term

During the nine months ended July 31, 2023, the The Company invested \$195.8 million began to purchase invest in U.S. Treasury Securities \$120.9 million of which matured during the nine months ended July 31, 2023, fiscal year 2023. The U.S. Treasury Securities were classified as held-to-maturity and were recorded at amortized cost. There are no U.S. Treasury Securities outstanding as of July 31, 2023 have maturity dates ranging from August 8, 2023 to October 26, 2023 January 31, 2024. We have classified the U.S. Treasury Securities as held-to-maturity and recorded them at amortized cost. The following table summarizes the amortized cost basis and fair value (based on quoted market prices) at July 31, 2023 (in thousands) as of October 31, 2023 were \$103.8 million.

	Amortized cost	Gross unrealized gains	Gross unrealized losses	Fair value
U.S. Treasury Securities				
As of July 31, 2023	\$ 77,431	\$ -	\$ (38)	\$ 77,393

The contractual maturities of investments areas of October 31, 2023 were within one year and the weighted average yield to maturity is 5.09% was 5.45%.

Note 6. Inventories

Inventories (current and long-term) as of July 31, 2023 January 31, 2024 and October 31, 2022 October 31, 2023 consisted of the following (in thousands):

	July 31, 2023	October 31, 2022	January 31, 2024	October 31, 2023
Raw materials	\$ 38,737	\$ 30,624	\$ 38,276	\$ 36,200
Work-in-process (1)	54,373	67,834	67,326	55,585
Inventories	93,110	98,458	105,602	91,785
Inventories – current	(85,561)	(90,909)	(102,859)	(84,456)
Inventories – long-term (2)	\$ 7,549	\$ 7,549	\$ 2,743	\$ 7,329

- (1) Work-in-process includes the standard components of inventory used to build the typical modules or module components that are intended to be used in future project asset construction or power plant orders or for use under the Company's service agreements. Included in work-in-process as of July 31, 2023 and October 31, 2022 was \$35.4 million and \$54.0 million, respectively, of completed standard components and modules.
- (2) Long-term inventory includes modules that are contractually required to be segregated for use as exchange modules for specific project assets.

Raw materials consist mainly of various nickel powders and steels, various other components used in producing cell stacks and purchased components for balance of plant. Work-in-process inventory is comprised of material, labor, and overhead costs incurred to build fuel cell stacks and modules, which are subcomponents of a power platform.

[Table of Contents](#)**Note 7. Project Assets**

Project assets as of **July 31, 2023** **January 31, 2024** and **October 31, 2022** **October 31, 2023** consisted of the following (in thousands):

	July 31, 2023	October 31, 2022	Estimated Useful Life	January 31, 2024	October 31, 2023	Estimated Useful Life
Project Assets – Operating	\$ 211,573	\$ 154,736	4-20 years	\$ 308,188	\$ 213,753	4-20 years
Accumulated depreciation	(41,174)	(29,546)		(48,121)	(46,263)	
Project Assets – Operating, net	170,399	125,190		260,067	167,490	
Project Assets – Construction in progress	77,824	107,696		723	90,576	
Project Assets, net	\$ 248,223	\$ 232,886		\$ 260,790	\$ 258,066	

The estimated useful lives of these project assets are 20 years for balance of plant ("BOP") and site construction, and four to seven years for modules. Project assets as of **July 31, 2023** **January 31, 2024** and **October 31, 2022** **October 31, 2023** included **nine** **twelve** and **eight**, **nine**, respectively, completed, commissioned installations generating power with respect to which the Company has a **power purchase agreement ("PPA")** with the end-user of power and site host with a net aggregate value of **\$170.4 million** **\$260.1 million** and **\$125.2 million** **\$167.5 million** as of **July 31, 2023** **January 31, 2024** and **October 31, 2022** **October 31, 2023**, respectively. As of July 31, 2023, certain **Certain** of these assets **were** **are** the subject of sale-leaseback arrangements with **Crestmark Equipment Finance ("Crestmark")**. The increase in operating project assets at **July 31, 2023** **January 31, 2024**, compared to **October 31, 2022** **October 31, 2023**, is a result of the inclusion of the **Groton Toyota Project** and the **Derby Projects**, all of which became operational during the **nine** **three** months ended **July 31, 2023** **January 31, 2024**.

Project assets as of **July 31, 2023** **January 31, 2024** and **October 31, 2022** **October 31, 2023** also include installations with carrying values of **\$77.8 million** **\$0.7 million** and **\$107.7 million** **\$90.6 million**, respectively, which are being developed and constructed by the Company in connection with projects for which we have entered into PPAs or projects for which we expect to secure PPAs or otherwise recover the asset value and which have not yet been placed in service.

Included in "Construction in progress" is the 2.3 MW Toyota project. It was determined in the fourth quarter of fiscal year 2021 that a potential source of renewable natural gas ("RNG") at favorable pricing was no longer sufficiently probable and that market pricing for RNG had significantly increased, resulting in the determination that the carrying value of the project asset was no longer recoverable. As of July 31, 2023, current market pricing of RNG continues to result in non-recoverability consistent with the Company's prior assessment. Refer to Note 17, "Commitments and Contingencies" for more information regarding fuel risk exposure. As this project is being constructed, only inventory components that can be redeployed for alternative use are being capitalized. The balance of costs incurred are being expensed as generation cost of revenues. **PPAs.**

Project construction costs incurred for long-term project assets are reported as investing activities in the Consolidated Statements of Cash Flows.

Note 8. Goodwill and Intangible Assets

As of **July 31, 2023** **January 31, 2024** and **October 31, 2022** **October 31, 2023**, the Company had goodwill of \$4.1 million and intangible assets of **\$16.4 million** **\$15.8 million** and **\$17.4 million** **\$16.1 million**, respectively, that were recorded in connection with the Company's 2012 acquisition of Versa Power Systems, Inc. ("Versa") and the 2019 Bridgeport Fuel Cell Project acquisition.

The Versa acquisition intangible asset represents an indefinite-lived in-process research and development intangible asset for cumulative research and development efforts associated with the development of solid oxide fuel cell stationary power generation. Amortization expense for the Bridgeport Fuel Cell Project-related intangible asset for each of the three month periods ended **July 31, 2023** **January 31, 2024** and **2022** **2023** was \$0.3 million and for each.

The following tables summarize the carrying value of the **nine** **month** periods ended **July 31, 2023** Company's intangible assets as of **January 31, 2024** and **2022** **2023** was \$0.9 million. **October 31, 2023** (in thousands):

As of January 31, 2024	Accumulated		
	Gross Amount	Amortization	Net Amount

In-Process Research and Development	\$ 9,592	\$ -	\$ 9,592
Bridgeport PPA	12,320	(6,160)	6,160
Total	\$ 21,912	\$ (6,160)	\$ 15,752
As of October 31, 2023			
In-Process Research and Development	\$ 9,592	\$ -	\$ 9,592
Bridgeport PPA	12,320	(5,836)	6,484
Total	\$ 21,912	\$ (5,836)	\$ 16,076

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The following tables summarize the carrying value of the Company's intangible assets as of July 31, 2023 and October 31, 2022 (in thousands):

As of July 31, 2023	Accumulated		
	Gross Amount	Amortization	Net Amount
In-Process Research and Development	\$ 9,592	\$ -	\$ 9,592
Bridgeport PPA	12,320	(5,512)	6,808
Total	\$ 21,912	\$ (5,512)	\$ 16,400
As of October 31, 2022			
In-Process Research and Development	Accumulated		
	Gross Amount	Amortization	Net Amount
In-Process Research and Development	\$ 9,592	\$ -	\$ 9,592
Bridgeport PPA	12,320	(4,539)	7,781
Total	\$ 21,912	\$ (4,539)	\$ 17,373

Note 9. Accrued Liabilities

Accrued liabilities as of **July 31, 2023** **January 31, 2024** and **October 31, 2022** **October 31, 2023** consisted of the following (in thousands):

	July 31,	October 31,	January 31,	October 31,
	2023	2022	2024	2023
Accrued payroll and employee benefits (1)	\$ 5,950	\$ 8,534	\$ 4,093	\$ 7,752
Accrued product warranty cost	203	537		
Consideration payable to a customer (2)			3,958	3,958
Accrued service agreement and PPA costs (2) (3)	13,500	11,340	10,756	10,742
Accrued legal, taxes, professional and other	3,393	7,004	3,516	3,861
Accrued liabilities	\$ 23,046	\$ 27,415	\$ 22,323	\$ 26,313

- (1) The balance in this account represents accrued payroll, payroll taxes and accrued bonus for both periods. The decrease in the account relates to a decrease in accrued bonus as of **July 31, 2023** **January 31, 2024** due to the payout in **2023** **2024** of bonuses earned under the **2022** **2023** Management Incentive Plan.
- (2) The balance represents the net amount due to Toyota as an accrued liability, which will be reduced over time against billings to Toyota for hydrogen sales under the terms of the Toyota HPPA.

(3) Accrued service agreement costs include loss accruals on service agreements of \$7.2 million and \$7.3 million \$9.5 million as of July 31, 2023 January 31, 2024 and October 31, 2022, respectively October 31, 2023. The accruals for performance guarantees on service agreements and PPAs were \$5.8 million and \$4.1 million \$1.2 million as of July 31, 2023 January 31, 2024 and October 31, 2022 October 31, 2023.

Note 10. Leases

The Company enters into operating and finance lease agreements for the use of real estate, vehicles, information technology equipment, and certain other equipment. We determine if an arrangement contains a lease at inception, which is the date on which the terms of the contract are agreed to and the agreement creates enforceable rights and obligations. Operating The impacts of accounting for operating leases are included in Operating lease right-of-use assets, net, Operating lease liabilities, and Long-term operating lease liabilities in the Company's Consolidated Balance Sheets. Finance leases are not considered significant to the Company's Consolidated Balance Sheets or Consolidated Statements of Operations and Comprehensive Loss.

On January 5, 2023, the Company's wholly-owned subsidiary, Versa Power Systems Ltd. ("Versa Ltd."), entered into a lease expansion, extension and amending agreement to an existing building lease that was originally entered into on May 20, 2005. The lease expansion, extension and amending agreement extended the term of the lease through September 30, 2028 and expanded the space leased by Versa Ltd. in Calgary, Alberta, Canada to include approximately 48,000 square feet of additional space. A right-of-use ("ROU") asset and operating lease liability was initially recorded for this lease as of the first quarter of fiscal year 2023 for CAD \$2.7 million (\$2.0 million USD).

On February 20, 2023, Versa Ltd. entered into a Lease Expansion and Amending Agreement – Short Term (the "Lease Expansion and Amendment") to the existing lease for the Calgary manufacturing facility (i.e., the lease referenced in the paragraph immediately above). Under the Lease Expansion and Amendment, the space leased by Versa Ltd. Company currently has been further expanded to include, on a short-term basis, an additional space located at the same address as the original Calgary manufacturing facility (4800 – 52nd Street SE, Calgary, Alberta, Canada) and consisting of approximately 18,627 square feet (the "Temporary Premises"). The term of the lease with respect to the Temporary Premises commenced on April 1, 2023 and will expire on July 31, 2024. The Temporary Premises is expected to be used for short term expansion of solid

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oxide fuel cell and stack production and commissioning of newly purchased production equipment. A ROU asset and operating lease liability was initially recorded for the Lease Expansion and Amendment as of the second quarter of fiscal year 2023 for CAD \$0.2 million (\$0.1 million USD). no finance leases.

Operating lease expense for each of the three month periods ended July 31, 2023 January 31, 2024 and 2022 2023 was \$0.4 million and for the nine months ended July 31, 2023 and 2022 was \$1.2 million and \$1.1 million \$0.3 million, respectively. As of July 31, 2023 January 31, 2024, the weighted average remaining lease term (in years) was approximately 17 years and the weighted average discount rate was 6.97% 6.96%. Lease payments made during the three months ended July 31, 2023 January 31, 2024 and 2022 2023 were \$0.3 million \$0.2 million and \$0.4 million, respectively, and for the nine months ended July 31, 2023 and 2022 were \$0.9 million and \$1.1 million \$0.3 million, respectively.

Undiscounted maturities of operating lease and finance lease liabilities as of July 31, 2023 January 31, 2024 were as follows (in thousands):

	Operating Leases	Finance Leases	Operating Leases
Due Year 1	\$ 1,094	\$ 29	\$ 1,142
Due Year 2	1,224	—	1,275
Due Year 3	1,266	—	1,294
Due Year 4	1,312	—	1,314
Due Year 5	1,332	—	1,149
Thereafter	13,006	—	12,519
Total undiscounted lease payments	19,234	29	18,693

Less imputed interest	(9,289)	(5)	(9,087)
Total discounted lease payments	\$ 9,945	\$ 24	\$ 9,606

Note 11. Stockholders' Equity

2022 Open Market Sale Agreement

On July 12, 2022, the Company entered into the an Open Market Sale Agreement with Jefferies LLC, B. Riley Securities, Inc., Barclays Capital Inc., BMO Capital Markets Corp., BofA Securities, Inc., Canaccord Genuity LLC, Citigroup Global Markets Inc., J.P. Morgan Securities LLC and Loop Capital Markets LLC (the "Open Market Sale Agreement") with respect to an at the market offering program under which the Company may, from time to time, offer and sell up to 95.0 million shares of the Company's common stock. Pursuant to the Open Market Sale Agreement, the Company **pays** is required to pay and has paid each agent a commission equal to 2.0% of the gross proceeds from each sale of shares made by such agent under the Open Market Sale Agreement. From the date of the Open Market Sale Agreement through **July 31, 2023, January 31,**

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2024, the Company sold approximately **60.8 million** **62.8 million** shares under the Open Market Sale Agreement at an average sale price of **\$2.67** **\$2.66** per share. Of this 60.8 million shares, approximately 57.4 million shares were issued and settled on or prior to **July 31, 2023** share, resulting in gross proceeds of approximately **\$155.0 million**, **\$166.8 million** before deducting sales commissions and fees, and net proceeds to the Company of approximately **\$151.2 million**, **\$162.7 million** after deducting sales commissions and fees totaling approximately **\$3.8 million**, **\$4.1 million**. During the three and nine months ended July 31, 2023, approximately 41.3 million and 42.3 million shares, respectively, No sales were sold made under the Open Market Sale Agreement at an average sale price of \$2.24 per share and \$2.26 per share, respectively. Of these 41.3 million and 42.3 million shares, approximately 37.9 million and 38.9 million shares were issued and settled during the three and nine months quarter ended July 31, 2023, respectively, resulting in gross proceeds of approximately \$85.1 million and \$88.0 million, respectively, before deducting sales commissions and fees, and net proceeds of approximately \$83.3 million and \$85.9 million, respectively, after deducting sales commissions and fees totaling approximately \$1.8 million and \$2.1 million, respectively. **January 31, 2024.**

As of **July 31, 2023** **January 31, 2024**, approximately **37.6 million** **32.2 million** shares were available for issuance under the Open Market Sale Agreement (which includes approximately 3.4 million Agreement). However, in order to sell additional shares that were sold on or prior to July 31, 2023 but were issued subsequent to July 31, 2023). Taking into account all of the shares sold on or prior to July 31, 2023, approximately 34.2 million shares were available for sale under the Open Market Sale Agreement, as of July 31, 2023.

See Note 18. "Subsequent Events" for information regarding the Company must file a prospectus supplement covering such sales made under the Open Market Sale Agreement following the end of the quarter. its Registration Statement on Form S-3, which was filed in October 2023.

Note 12. Redeemable Preferred Stock

The Company is authorized to issue up to 250,000 shares of preferred stock, par value \$0.01 per share, in one or more series, of which 105,875 shares were designated as 5% Series B Cumulative Convertible Perpetual Preferred Stock ("Series B Preferred Stock") in March 2005.

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Series B Preferred Stock

As of **July 31, 2023** **January 31, 2024**, the Company had 105,875 shares of Series B Preferred Stock, with a liquidation preference of \$1,000.00 per share, authorized for issuance. As of **July 31, 2023** **January 31, 2024** and **October 31, 2022** **October 31, 2023**, there were 64,020 shares of Series B Preferred Stock issued and outstanding, with a carrying value of \$59.9 million. Dividends of **\$2.4 million** **\$0.8 million** were paid in cash during each of the **nine** **three** month periods ended **July 31, 2023** **January 31, 2024** and **2022** **2023**.

Note 13. Loss Per Share

The calculation of basic and diluted loss per share was as follows (in thousands, except share and per share amounts):

	Three Months Ended July 31,		Nine Months Ended July 31,		Three Months Ended January 31,	
	2023	2022	2023	2022	2024	2023
Numerator						
Net loss attributable to FuelCell Energy, Inc.	\$ (24,279)	\$ (29,414)	\$ (77,204)	\$ (100,255)	\$ (19,793)	\$ (18,622)
Series B preferred stock dividends	(800)	(800)	(2,400)	(2,400)	(800)	(800)
Net loss attributable to common stockholders	\$ (25,079)	\$ (30,214)	\$ (79,604)	\$ (102,655)	\$ (20,593)	\$ (19,422)
Denominator						
Weighted average common shares outstanding – basic	415,867,594	387,465,758	409,361,826	375,638,293	451,637,041	405,803,753
Effect of dilutive securities ⁽¹⁾	-	-	-	-	-	-
Weighted average common shares outstanding – diluted	415,867,594	387,465,758	409,361,826	375,638,293	451,637,041	405,803,753
Net loss to common stockholders per share – basic	\$ (0.06)	\$ (0.08)	\$ (0.19)	\$ (0.27)	\$ (0.05)	\$ (0.05)
Net loss to common stockholders per share – diluted ⁽¹⁾	\$ (0.06)	\$ (0.08)	\$ (0.19)	\$ (0.27)	\$ (0.05)	\$ (0.05)

(1) Due to the net loss to common stockholders in each of the periods presented above, diluted loss per share was computed without consideration to potentially dilutive instruments as their inclusion would have been anti-dilutive. As of **July 31, 2023** **January 31, 2024** and **2022** **2023**, potentially dilutive securities excluded from the diluted loss per share calculation are as follows:

	July 31,	July 31,	January 31,	January 31,
	2023	2022	2023	2022
Outstanding options to purchase common stock	18,291	20,231	18,291	20,231
Unvested Restricted Stock Units	7,280,952	3,573,354	9,397,055	7,102,089
5% Series B Cumulative Convertible Perpetual Preferred Stock	37,837	37,837	37,837	37,837
Total potentially dilutive securities	7,337,080	3,631,422	9,453,183	7,160,157

Note 14. Restricted Cash

As of **July 31, 2023** **January 31, 2024** and **October 31, 2022** **October 31, 2023**, there was **\$32.7 million** **\$51.3 million** and **\$23.0 million** **\$49.6 million**, respectively, of restricted cash and cash equivalents pledged as performance security, reserved for future debt service requirements, and reserved for

letters of credit for certain banking requirements and contracts. The allocation of restricted cash is as follows (in thousands):

	July 31, 2023	October 31, 2022	January 31, 2024	October 31, 2023
Cash Restricted for Outstanding Letters of Credit (1)	\$ 7,281	\$ 4,993	\$ 14,152	\$ 14,152
Cash Restricted for PNC Sale-Leaseback Transactions (2)	-	5,010		
Cash Restricted for Crestmark Sale-Leaseback Transactions (3)	2,899	2,894		
Bridgeport Fuel Cell Park Project Debt Service and Performance Reserves (4)	-	8,746		
Debt Service and Performance Reserves related to OpCo Financing Facility(5)	20,015	-		
Cash Restricted for Crestmark Sale-Leaseback Transactions			2,903	2,901
Debt Service and Performance Reserves related to OpCo Financing Facility			21,631	19,698
Debt Service and Performance Reserves related to the Senior and Subordinated Back Leverage Loan Facilities			8,959	9,294
Other	2,548	1,346	3,688	3,579
Total Restricted Cash	32,743	22,989	51,333	49,624
Restricted Cash and Cash Equivalents – Short-Term (6)	(6,078)	(4,423)		
Restricted Cash and Cash Equivalents – Short-Term (2)			(5,957)	(5,159)
Restricted Cash and Cash Equivalents – Long-Term	\$26,665	\$ 18,566	\$ 45,376	\$ 44,465

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- (1) Letters of credit outstanding as of **July 31, 2023** **January 31, 2024** expire on various dates through **December 2028**. The increase from **October 31, 2022** represents a letter of credit entered into for a project asset-specific gas contract **October 2029**.
- (2) Long and short-term reserve that was to be used primarily to fund future module exchanges for operating projects falling under sale-leaseback transactions with PNC Energy Capital, LLC ("PNC") (which transactions were terminated in May 2023).
- (3) Long and short-term reserve that is to be used primarily to fund future module exchanges and other performance obligations under Crestmark sale-leaseback transactions.
- (4) Long and short-term reserves for the Bridgeport Fuel Cell Park Project that were to be used to fund future module exchanges and other performance requirements, which were released during the third quarter of fiscal year 2023.
- (5) Long and short-term reserves for a capital reserve account required to be maintained under the OpCo Financing Facility.
- (6) Short-term restricted cash and cash equivalents are amounts expected to be released and classified as unrestricted cash within twelve months of the balance sheet date.

Note 15. Debt

Debt as of **July 31, 2023** **January 31, 2024** and **October 31, 2022** **October 31, 2023** consisted of the following (in thousands):

	July 31, 2023	October 31, 2022	January 31, 2024	October 31, 2023
Connecticut Green Bank Loan	\$ 3,000	\$ 4,800		
Connecticut Green Bank Loan (Bridgeport Fuel Cell Project)	—	3,507		
Liberty Bank Term Loan Agreement (Bridgeport Fuel Cell Project)	—	5,382		
Fifth Third Bank Term Loan Agreement (Bridgeport Fuel Cell Project)	—	5,382		
Connecticut Green Bank Loan (Subordinated Back Leverage Loan Facility)			\$ 8,000	\$ 8,000
Liberty Bank Term Loan Agreement (Senior Back Leverage Loan Facility)			5,769	5,876
Amalgamated Bank Loan (Senior Back Leverage Loan Facility)			5,763	5,873
Finance obligation for sale-leaseback transactions	18,810	56,625	18,818	18,814
State of Connecticut Loan	7,126	7,774	6,689	6,908
Finance lease obligations	24	57	—	12
OpCo Financing Facility	79,307	—	75,731	77,510
Deferred finance costs	(3,257)	(1,152)	(3,351)	(3,526)
Total debt and finance obligations	105,010	82,375	117,419	119,467

Current portion of long-term debt and finance obligations	(9,763)	(13,198)	(10,198)	(10,067)
Long-term debt and finance obligations	\$ 95,247	\$ 69,177	\$107,221	\$109,400

During the third quarter of fiscal year 2023, the Company entered into OpCo Financing Facility Interest Rate Swap – Fair Value Adjustment

The Company's interest rate swap related to the OpCo Financing Facility (described below), (as defined elsewhere herein) is recorded at its fair value each reporting period, with the proceeds resulting gains/losses recorded to other income/expense. The interest rate swap is a Level 2 asset/liability since the value can be determined based on the observed values for underlying interest rates. The fair value adjustment for the three months ended January 31, 2024 resulted in a loss of \$3.5 million as a result of a decrease of approximately 100 basis points in the Secured Overnight Financing Rate ("SOFR"). The Company has recorded a derivative liability within long-term debt and other liabilities on the Consolidated Balance Sheets, which were used, in part, to pay off (i) approximately \$1.8 million had an estimated fair value of the Company's long-term indebtedness to Connecticut Green Bank (the "Connecticut Green Bank Loan"), \$0.2 million as of January 31, 2024 and (ii) all of the outstanding senior and subordinated indebtedness of the Company and/or its subsidiaries to Liberty Bank, Fifth Third Bank and Connecticut Green Bank related to recorded a derivative asset within other assets on the Bridgeport Fuel Cell Project. In addition, following the end Consolidated Balance Sheets, which had an estimated fair value of the third quarter, the Company entered into new financing facilities for the Groton Project, a portion \$3.3 million as of the proceeds of which were used to repay, in full, all of the Company's remaining indebtedness under the Connecticut Green Bank Loan. See Note 18, "Subsequent Events" for additional information, October 31, 2023.

OpCo Financing Facility

On May 19, 2023, FuelCell Energy Opco Finance 1, LLC ("OpCo Borrower"), a wholly owned subsidiary of FuelCell Energy Finance, LLC ("FCEF"), which, in turn, is a wholly owned subsidiary of FuelCell Energy, Inc. ("Parent"), entered into a Financing Agreement (the "Financing Agreement") with, by and among Investec Bank plc in its capacities as a lender ("Investec Lender"), administrative agent ("Administrative Agent"), and collateral agent ("Collateral Agent"); Investec, Inc. as coordinating lead arranger and sole bookrunner; Bank of Montreal (Chicago Branch) in its capacity as a lender ("BMO Lender") and as mandated lead arranger; and each of Liberty Bank, Amalgamated Bank and Connecticut Green Bank as lenders (collectively with Investec Lender and BMO Lender, the "Lenders") for a term loan facility in an amount not to exceed \$80.5 million (the "Term Loan Facility" and such term loan, the "Term Loan") and a letter of credit facility in an amount not to exceed \$6.5 million (the "LC Facility" and together with the Term Loan Facility, the "OpCo Financing Facility").

OpCo Borrower's obligations under the Financing Agreement are secured by Parent's interest in six operating fuel cell generation projects: (i) the Bridgeport Fuel Cell Project, located in Bridgeport, Connecticut; (ii) the Central CT State

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University Project, located in New Britain, Connecticut; (iii) the Pfizer Project, located in Groton, Connecticut; (iv) the LIPA Yaphank Project, located in Long Island, New York; (v) the Riverside Regional Water Quality Control Plant Project, located in Riverside, California; and (vi) the Santa Rita Jail Project, located in Alameda County, California (each, a "Project" and collectively, the "Projects").

Immediately prior to the closing on the OpCo Financing Facility, which closing occurred on May 19, 2023, Parent caused to be transferred to OpCo Borrower all of the outstanding equity interests in: (i) Bridgeport Fuel Cell, LLC (the "Bridgeport Project Company"), the entity that owns the Bridgeport Fuel Cell Project; (ii) New Britain Renewable Energy, LLC (the "CCSU Project Company"), the entity that owns the Central CT State University Project; (iii) Groton Fuel Cell 1, LLC (the "Pfizer Project Company"), the entity that owns the Pfizer Project; (iv) Riverside Fuel Cell, LLC (the "Riverside Project Company"), the entity that owns the Riverside Regional Water Quality Control Plant Project; (v) SRJFC, LLC (the "Santa Rita Project Company"), the entity that owns the Santa Rita Jail Project; and (vi) Fuel Cell YT Holdco, LLC (the "Class B Member"), the entity that owns Parent's Class B membership interest in YTBC Holdco, LLC (the "Yaphank Tax Equity Partnership"), the tax equity partnership with Renewable Energy Investors, LLC (the "Class A Member"), as tax equity investor, which Yaphank Tax Equity Partnership, in turn, owns Yaphank Fuel Cell Park, LLC (the "Yaphank Project Company"), the entity that owns the LIPA Yaphank Project.

At the time of closing on the OpCo Financing Facility: (i) the Bridgeport Fuel Cell Project was encumbered by senior and subordinated indebtedness to Liberty Bank, Fifth Third Bank and Connecticut Green Bank in the aggregate amount of approximately \$11.4 million; and (ii) the Pfizer Project, the Riverside Regional Water Quality Control Plant Project and the Santa Rita Jail Project were subject to sale and

leaseback transactions and agreements with PNC Energy Capital, LLC ("PNC") in which the lease buyout amounts, including sales taxes, were approximately \$15.7 million, \$3.7 million and \$2.8 million, respectively. In connection with closing on the OpCo Financing Facility, all of the foregoing indebtedness and lease buyout amounts were repaid and extinguished with proceeds of the Term Loan and funds of approximately \$7.3 million that were released from restricted and unrestricted reserve accounts held at PNC at the time of closing, resulting in the applicable project companies re-acquiring ownership of the three leased projects from PNC, the termination of the agreements with PNC related to the sale-leaseback transactions, and the termination of the senior and subordinated credit agreements with, the related promissory notes issued to, and the related pledge and security agreements with, Liberty Bank, Fifth Third Bank and Connecticut Green Bank related to the Bridgeport Fuel Cell Project. Further, in connection with the closing on the OpCo Financing Facility and the termination of the senior and subordinated credit agreements with Liberty Bank, Fifth Third Bank and Connecticut Green Bank related to the Bridgeport Fuel Cell Project, Fifth Third Bank and the Bridgeport Project Company agreed that the obligations arising out of the swap transactions contemplated by their related interest rate swap agreement were terminated and waived and the swap agreement was effectively terminated. In addition, in connection with closing on the OpCo Financing Facility, proceeds of the Term Loan were used to repay a portion of Parent's long-term indebtedness to Connecticut Green Bank in the amount of approximately \$1.8 million.

At the closing, \$80.5 million, the entire amount of the Term Loan portion of the OpCo Financing Facility, was drawn down. After payment of fees and transaction costs (including fees to the Lenders and legal costs) of approximately \$2.9 million in the aggregate, the remaining proceeds of approximately \$77.6 million were used as follows: (i) approximately \$15.0 million was used (in addition to the approximately \$7.3 million released from restricted and unrestricted reserve accounts held at PNC) to pay the lease buyout amounts and sales taxes referred to above and to re-acquire the three projects owned by PNC as referred to above; (ii) approximately \$11.4 million was used to extinguish the indebtedness to Liberty Bank, Fifth Third Bank, and Connecticut Green Bank relating to the Bridgeport Fuel Cell Project; (iii) approximately \$1.8 million was used to repay a portion of Parent's long-term indebtedness to Connecticut Green Bank; (iv) \$14.5 million was used to fund a capital expenditure reserve account required to be maintained pursuant to the terms and conditions of the Financing Agreement (which is classified as restricted cash on the Company's Consolidated Balance Sheets); and (v) approximately \$34.9 million was distributed to Parent for use as Parent determines in its sole discretion. In addition, in connection with the extinguishment of the Company's indebtedness to Liberty Bank and Fifth Third Bank referred to above, approximately \$11.2 million of restricted cash was released to the Company from Liberty Bank and Fifth Third Bank. Taking into consideration the release of such funds, the total net proceeds to the Company from these transactions were approximately \$46.1 million (which is classified as unrestricted cash on the Company's Consolidated Balance Sheets).

The Term Loan portion of the OpCo Financing Facility will accrue interest on the unpaid principal amount calculated from the date of such Term Loan until the maturity date thereof at a rate per annum during each Interest Period (as defined in the Financing Agreement) for such Term Loan equal to (A) with respect to SOFR Rate Loans, (i) the Adjusted Daily Compounded SOFR for such Interest Period with respect to SOFR Rate Loans *plus* (ii) the Applicable Margin, and

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(B) with respect to Base Rate Loans, (i) the Base Rate from time to time in effect *plus* (ii) the Applicable Margin (in each case as defined in the Financing Agreement). The Applicable Margin for SOFR Rate Loans is 2.5% for the first four years of the term and thereafter, 3%. The Applicable Margin for Base Rate Loans is 1.5% for the first four years of the term and thereafter, 2%. At the closing, in connection with the draw down of the entire amount of the Term Loan, OpCo Borrower elected to make such draw down a SOFR Rate Loan with an initial Interest Period of three months. After the initial Interest Period of three months, OpCo Borrower may elect both the applicable Interest Period (i.e., one month, three months or six months) and whether the Term Loan will be treated as a SOFR Rate Loan or a Base Rate Loan for such Interest Period. Interest payments are required to be made quarterly.

Quarterly principal amortization obligations are also required to be made (based on 17-year principal amortization designed to be fully repaid in 2039), with quarterly amortization payments based on a 1.30x debt service coverage ratio sizing based on contracted cash flows (before giving effect to module replacement expenses and module replacement drawdown releases). The Term Loan has a seven-year term, maturing on May 19, 2030.

Pursuant to the terms and conditions of the Financing Agreement, OpCo Borrower is required to maintain a capital expenditures reserve to pay for expected module replacements. The total reserve balance is required to reach \$29.0 million, \$14.5 million of which was funded out of the closing advance of the Term Loan and the remainder of which is to be funded pursuant to an agreed upon funding schedule through cash flows generated by the Projects set forth in the Financing Agreement for the period of June 30, 2023 through December 31, 2029.

Pursuant to the terms and conditions of the Financing Agreement, OpCo Borrower is required to maintain a debt service reserve of not less than six months of the scheduled principal and interest payments. The letter of credit component of the OpCo Financing Facility is for the purpose of obtaining letters of credit to satisfy such obligation; at the closing, an Irrevocable Letter of Credit was issued by Investec Bank plc as the issuing bank in favor of the Collateral Agent for the benefit of the Lenders in the amount of \$6.5 million to satisfy the debt service reserve funding obligation.

Pursuant to the Financing Agreement, within 30 days of the financial close of the Financing Agreement, OpCo Borrower was required to enter into one or more hedge transactions, with a Lender or an affiliate thereof pursuant to one or more interest rate agreements, to hedge OpCo Borrower's interest rate exposure relating to the Term Loan from floating to fixed. Such hedge transactions are required to be in effect at all times during the entire amortization period and have an aggregate notional amount subject to the hedge transactions at any time equal to at least 75% and no more than 105% of the aggregate principal balance of the Term Loan outstanding (taking into account scheduled amortization of the Term Loan).

Upon closing, on May 19, 2023, OpCo Borrower entered into an ISDA 2002 Master Agreement (the "Investec Master Agreement") and an ISDA Schedule to the 2002 Master Agreement (the "Investec Schedule") with Investec Bank plc as a hedge provider, and an ISDA 2002 Master Agreement (the "BMO Master Agreement") and an ISDA Schedule to the 2002 Master Agreement (the "BMO Schedule") with Bank of Montreal (Chicago Branch) as a hedge provider. On May 22, 2023, OpCo Borrower executed the related trade confirmations for these interest rate swap agreements with these hedge providers to protect against adverse price movements in the floating SOFR rate associated with 100% of the aggregate principal balance of the Term Loan outstanding. Pursuant to the terms of such agreements, OpCo Borrower will pay a fixed rate of interest of 3.716%. The net interest rate across the Financing Agreement and the swap transaction is 6.366% in the first four years and 6.866% thereafter. The obligations of OpCo Borrower to the hedge providers under the interest rate swap agreements are treated as obligations under the Financing Agreement and, accordingly, are secured, on a pari passu basis, by the same collateral securing the obligations of OpCo Borrower under the Financing Agreement, which collateral is described below. The Company has not elected hedge accounting treatment and, as a result, the derivative will be remeasured to fair value quarterly, with the resulting gains/losses recorded to other income/expense. The fair value adjustments for the three and nine months ended July 31, 2023 resulted in a gain of \$0.5 million.

The Financing Agreement contains certain reporting requirements and other affirmative and negative covenants which are customary for transactions of this type. Included in the covenants are covenants that: (i) the Yaphank Project Company obtain ongoing three year extensions of its current gas agreement; (ii) any annual operating expense budget that exceeds 115% of the Base Case Model (as defined in the Financing Agreement) for that year be approved by the Required Lenders (i.e., Lenders constituting more than 50% of the amounts loaned); (iii) OpCo Borrower maintain a debt service coverage ratio of not less than 1.20:1.00 (based on the trailing 12 months and tested every six months); and (iv) the Class B Member is required to exercise its option to purchase the Class A Member's interest in the Yaphank Tax Equity Partnership during the six month period following the "Flip Point" as set forth in the limited liability company agreement for the Yaphank Tax Equity Partnership. The Financing Agreement also contains customary representations and warranties and customary

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events of default that cause, or entitle the Lenders to cause, the outstanding loans under the Financing Agreement to become immediately due and payable.

The Term Loan may be prepaid at any time at the option of OpCo Borrower without premium or penalty other than any "liquidation costs" if such prepayment occurs other than at the end of an Interest Period. In addition, there are certain mandatory repayments required under the Financing Agreement, including in connection with any sale or disposition of all of the Projects or of any of the LIPA Yaphank Project, the Bridgeport Fuel Cell Project or the Pfizer Project. If the Company disposes of any of the Riverside Regional Water Quality Control Plant Project, the Santa Rita Jail Project or the Central CT State University Project, OpCo Borrower is required to prepay an amount of the Term Loan based on the then stipulated value of the disposed Project.

Simultaneously with OpCo Borrower entering into the Financing Agreement, FCEF (as pledgor), OpCo Borrower and each of the Bridgeport Project Company, the Pfizer Project Company, the Riverside Project Company, the Santa Rita Project Company, the CCSU Project Company and the Class B Member, each as a subsidiary grantor party and guarantor, entered into an Omnibus Guarantee, Pledge and Security Agreement (the "Security Agreement") with Investec Bank plc as Collateral Agent, pursuant to which, as collateral for the Term Loan Facility,

the LC Facility and the hedge agreements (i) FCEF granted to Collateral Agent a security interest in all of FCEF's equity interest in OpCo Borrower; (ii) OpCo Borrower granted to Collateral Agent a security interest in all of OpCo Borrower's assets consisting of its equity interests in the Bridgeport Project Company, the Pfizer Project Company, the Riverside Project Company, the Santa Rita Project Company, the CCSU Project Company and the Class B Member; (iii) each of the Bridgeport Project Company, the Pfizer Project Company, the Riverside Project Company, the Santa Rita Project Company and the CCSU Project Company granted to Collateral Agent a security interest in all of each such entity's assets consisting principally of the respective generation facilities and project agreements; and (iv) the Class B Member granted to Collateral Agent a security interest in all of such Class B Member's assets, consisting principally of its equity interest in the Yaphank Tax Equity Partnership. Pursuant to the Security Agreement, each of the subsidiary grantor parties jointly and severally guaranteed payment of all of the obligations secured by the Security Agreement.

Simultaneously with the execution of the Financing Agreement, OpCo Borrower, Investec Bank plc as Collateral Agent and Administrative Agent and Liberty Bank as Depositary Agent entered into a Depositary Agreement (the "Depositary Agreement") pursuant to which OpCo Borrower established certain accounts at Liberty Bank, all of which were pledged to Collateral Agent as security for the Term Loan Facility, the LC Facility and the hedge agreements, including a Revenue Account; a Debt Service Reserve Account; a Redemption Account (for prepayments); a Capital Expenditure Reserve Account; and a Distribution Reserve Account (in each case as defined in the Depositary Agreement). Pursuant to the terms of the Financing Agreement and the Depositary Agreement, OpCo Borrower may make quarterly distributions to FCEF and Parent provided that: (i) no Event of Default or Default (in each case as defined in the Financing Agreement) exists under the OpCo Financing Facility; (ii) all reserve accounts have been funded; (iii) no letter of credit loans or unpaid drawings are outstanding with regard to any drawn down letter of credit under the LC Facility; (iv) OpCo Borrower has maintained a greater than 1.20:1.00 debt service coverage ratio for the immediate 12 month period; and (v) no Cash Diversion Event (i.e., certain events that would adversely impact distributions to the Class B Member in connection with the LIPA Yaphank Project, as further defined in the Financing Agreement) has occurred. Beginning with the quarter ending June 2025 and continuing until the quarter ending March 2026, prior to making contributions to the Debt Service Reserve Account or the Capital Expenditure Reserve Account or having funds available for distribution, out of operating cash flow, OpCo Borrower is required to make a quarterly payment to the Administrative Agent (on behalf of the Lenders) in the amount of \$675,000 per quarter to be applied to outstanding principal.

See Note 18. "Subsequent Events" for additional information regarding the repayment, in full, of the Connecticut Green Bank Loan as well as new financing facilities entered into for the Groton Project.

Third Amendment to Assistance Agreement with the State of Connecticut

In April 2023, the Company signed a Third Amendment (the "Third Amendment") to the Assistance Agreement with the State of Connecticut (which Assistance Agreement was originally entered into in November 2015 and previously amended in April 2017 and January 2019). The Third Amendment was approved by the State of Connecticut Office of Attorney General on May 18, 2023, and the State of Connecticut Office of Attorney General released, and the Company received, the countersigned Third Amendment on May 24, 2023, at which time the Third Amendment became effective. The Third Amendment further extends the Target Date (as defined elsewhere herein) to October 31, 2024 and updates the Employment Obligation (as defined elsewhere herein) to require the Company to retain 538 full-time positions in

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Connecticut on or before October 31, 2024 and to maintain such positions for 24 consecutive months. The 24 consecutive month period ending on or before the Target Date (as extended by the Third Amendment) that yields the highest annual average positions will be used to determine compliance with the updated Employment Obligation, provided that no portion of such 24 consecutive months may begin before the date of the Third Amendment. The Third Amendment also requires the Company to furnish a job audit (the "Job Audit") to the Commissioner of Economic and Community Development (the "Commissioner") no later than 90 days following the 24-month period described above.

If, as a result of the Job Audit, the Commissioner determines that the Company has failed to meet the updated Employment Obligation, the Company will be required to immediately repay a penalty of \$14,225.00 per each full-time employment position below the updated Employment Obligation. The amount repaid will be applied first to any outstanding fees, penalties or interest due, and then against the outstanding balance of the loan.

If, as a result of the Job Audit, the Commissioner determines that the Company has met the updated Employment Obligation and has created an additional 91 full-time employment positions, for a total of 629 full-time employees, the Company may receive a credit in the amount of \$2.0 million, which will be applied against the then-outstanding principal balance of the loan. Upon application of such credit, the Commissioner will recalculate the monthly payments of principal and interest such that such monthly payments shall amortize the then remaining principal balance over the remaining term of loan.

Note 16. Benefit Plans

We have stockholder approved equity incentive plans, a stockholder approved employee stock purchase plan and an employee tax-deferred savings plan which are described in more detail below.

Third Amended and Restated 2018 Omnibus Incentive Plan

At the Company's 2023 Annual Meeting of Stockholders, which was called to order and adjourned on April 6, 2023 and April 27, 2023 and was reconvened and concluded on May 22, 2023 (the "Annual Meeting"), the Company's stockholders approved the amendment and restatement of the FuelCell Energy, Inc. Second Amended and Restated 2018 Omnibus Incentive Plan (as so amended and restated, the "Third Amended and Restated Incentive Plan"), which had previously been approved by the Company's Board of Directors (the "Board"), subject to stockholder approval.

The purpose of the amendment and restatement of the Second Amended and Restated 2018 Omnibus Incentive Plan was to authorize the Company to issue up to 6,000,000 additional shares of the Company's common stock pursuant to awards under the Third Amended and Restated Incentive Plan.

Following the approval of the amendment and restatement (and therefore the Third Amended and Restated Incentive Plan) by the Company's stockholders at the Annual Meeting, the Third Amended and Restated Incentive Plan provides the Company with the authority to issue a total of 18,333,333 shares of the Company's common stock. The Third Amended and Restated Incentive Plan authorizes grants of stock options, stock appreciation rights ("SARs"), restricted stock awards ("RSAs"), restricted stock units ("RSUs"), shares, performance shares, performance units, incentive awards and dividend equivalent units to officers, other employees, directors, consultants and advisors. Up to 1,833,333 shares of the Company's common stock may be issued pursuant to the exercise of incentive stock options. Stock options, RSAs, RSUs and SARs have restrictions as to transferability. Stock option exercise prices are fixed by the Board but shall not be less than the fair market value of our common stock on the date of the grant. SARs may be granted in conjunction with stock options. The Board or the administrator of the Third Amended and Restated Incentive Plan may terminate the Third Amended and Restated Incentive Plan at any time. No award may be granted under the Third Amended and Restated Plan after the tenth anniversary of the approval of the Third Amended and Restated Plan by stockholders at the Annual Meeting.

Of the 18,333,333 shares of the Company's common stock authorized to be issued under the Third Amended and Restated Incentive Plan as of July 31, 2023, 9,210,981 remained available for grant as of July 31, 2023. Of the shares remaining available for grant, the Company had reserved, for potential future grant, up to 2,019,723 performance stock units if maximum performance is achieved.

Amended and Restated 2018 Employee Stock Purchase Plan

At the Annual Meeting, the Company's stockholders approved the amendment and restatement of the FuelCell Energy, Inc. 2018 Employee Stock Purchase Plan (as so amended and restated, the "Amended and Restated ESPP"), which had previously been approved by the Board, subject to stockholder approval.

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The purpose of the amendment and restatement of the 2018 Employee Stock Purchase Plan was to authorize the Company to issue up to 500,000 additional shares of the Company's common stock under the Amended and Restated ESPP.

Following the approval of the amendment and restatement (and therefore the Amended and Restated ESPP) by the Company's stockholders at the Annual Meeting, the Amended and Restated ESPP provides the Company with the authority to issue a total of 541,667 shares of the

Company's common stock. The Amended and Restated ESPP also increases the limit on the number of shares of the Company's common stock that any individual participant may purchase during an offering period to 1,000 shares.

The Amended and Restated ESPP, which is intended to satisfy the requirements of Section 423 of the Internal Revenue Code of 1986, as amended, allows the Company to provide eligible employees of the Company and of certain designated subsidiaries with the opportunity to voluntarily participate in the Amended and Restated ESPP, enabling such participants to purchase shares of the Company's common stock at a discount to market price at the time of such purchase. The Board may, in its sole discretion, terminate the Amended and Restated ESPP at any time. If the Board does not earlier terminate the Amended and Restated ESPP, the Amended and Restated ESPP will terminate on the date on which all shares of common stock available for issuance have been sold pursuant to purchase rights exercised under the Amended and Restated ESPP.

Long-Term Incentive Plans

The Board periodically approves Long-Term Incentive Plans which include performance-based awards tied to the Company's common stock price as well as time-vesting awards. None of the awards granted as part of Long-Term Incentive Plans include any dividend equivalent or other stockholder rights. To the extent the awards are earned, they may be settled in shares or cash of an equivalent value at the Company's option.

Long-Term Incentive Plan Awards for Fiscal Year 2023 Long-Term Incentive Plan: 2024:

On December 5, 2022 December 11, 2023, the Company's Board of Directors (the "Board") approved a certain awards to be made under the Company's Long-Term Incentive Plan for fiscal year 2023 2024 (the "FY 2023 LTI Plan"). The LTI Plan is as a sub-plan consisting of awards made under the Company's 2018 Omnibus Incentive Plan. The participants in the FY 2023 LTI Plan are members of senior management. The FY 2023 awards under the LTI Plan consists consist of two award components:

- 1) Relative Total Shareholder Return ("TSR") Performance Share Units ("PSU"). The PSUs granted during the nine three months ended July 31, 2023 January 31, 2024 will be earned over the performance period ending on October 31, 2025 October 31, 2026, but will remain subject to a continued service-based vesting requirement until the third anniversary of the date of grant. The performance measure for the relative TSR PSUs is the TSR of the Company relative to the TSR of the Russell 2000 from November 1, 2022 October 31, 2023 through October 31, 2025 October 31, 2026. The Compensation Committee established the performance assessment criteria for the relative TSR PSUs as the TSR of the Company relative to the TSR of the Russell 2000, with the award calibration being 100% plus or minus 0.5x the difference between the Company's TSR and the Russell 2000 Index composite TSR. The award is capped at 200% of the target number of PSUs, and the award is further capped at 100% of the target number of PSUs if the Company's absolute TSR over the performance period is negative. The Company's TSR is calculated by subtracting the Company's beginning stock price (defined as the average closing price of the Company's common stock over the 60 20 consecutive trading days ending on October 31, 2022 October 31, 2023) from the ending stock price (defined as the average closing price of the Company's common stock over the 60 20 consecutive trading days ending on October 31, 2025 October 31, 2026), adding any dividends during the period, and then dividing the result by the Company's beginning stock price. Given that the performance period is still open, the Company has reserved shares equal to 200% of the target number of PSUs, subject to performance during the remaining performance period as well as vesting based on continued service until December 5, 2025 December 11, 2026 (the third anniversary of the grant date).
- 2) Time-vesting RSUs. Restricted Stock Units ("RSU"). The time-vesting RSUs granted during the nine three months ended July 31, 2023 January 31, 2024 will vest at a rate of one-third of the total number of RSUs on each of the first three anniversaries of the date of grant.

On December 11, 2023, 6,548,760 RSUs were awarded to senior management under the LTI Plan, which included 3,274,384 PSUs (all of which are contingent) and 3,274,376 time-based vesting RSUs. The 3,274,384 PSUs granted during the three months ended January 31, 2024 are contingent upon Other Equity approval by the Company's stockholders at the 2024 Annual Meeting of Stockholders (the "Annual Meeting") of the authorization of sufficient additional shares of common stock under the Company's 2018 Omnibus Incentive Plans

The Plan to accommodate all of the shares of the Company's 2006 and 2010 Equity Incentive Plans remain in effect only common stock potentially issuable pursuant to the extent contingent awards granted in December 2023. If such stockholder approval is not obtained at the Annual Meeting, the awards will be immediately canceled without consideration therefor.

In addition to the awards granted to senior management, during the three months ended January 31, 2024, the Board also granted a total of awards outstanding 5,597,389 time-based vesting RSUs to certain salaried employees to promote ownership of the Company's equity and retention. Of the time-based vesting RSUs granted during the three months ended January 31, 2024, 3,978,496 are contingent upon approval by the Company's stockholders at the Annual Meeting of the authorization of sufficient additional shares of common stock under the plans as Company's 2018 Omnibus Incentive Plan to accommodate all of July 31, 2023 the shares of the Company's common stock potentially issuable pursuant to the contingent awards granted in December 2023. If such stockholder approval is not obtained at the Annual Meeting, the awards will be immediately canceled without consideration therefor. The time-based vesting RSUs granted during the three months ended January 31, 2024 vest at a rate of one-third of the total number of RSUs granted on each of the first three anniversaries of the date of

grant. PSUs are issued assuming participants achieve 100% target performance. The Company also reserves additional shares assuming the maximum performance targets are met.

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Share-Based Compensation

Share-based compensation was reflected in the Consolidated Statements of Operations and Comprehensive Loss as follows (in thousands):

	Three Months Ended July 31,		Nine Months Ended July 31,		Three Months Ended January 31,	
	2023		2023		2024	2023
	2023	2022	2023	2022	2024	2023
Cost of revenues	\$ 389	\$ 175	\$ 1,137	\$ 512	\$ 398	\$ 331
Administrative and selling expense	2,285	1,598	6,546	4,126	2,047	1,942
Research and development expense	375	135	1,034	319	361	291
	<u>\$ 3,049</u>	<u>\$ 1,908</u>	<u>\$ 8,717</u>	<u>\$ 4,957</u>	<u>\$ 2,806</u>	<u>\$ 2,564</u>

Restricted Stock Units Including Performance Share Units

The following table summarizes our RSU activity for the **nine** **three** months ended **July 31, 2023** **January 31, 2024**:

Restricted Stock Units	Weighted-Average Fair	
	Shares	Value
Outstanding as of October 31, 2022	2,520,881	\$ 7.93
Granted - PSUs	1,124,953	5.50
Granted - time-vesting RSUs	3,781,370	3.41
Vested	(261,059)	7.03
Forfeited	(64,056)	7.55
Outstanding as of January 31, 2023	7,102,089	\$ 5.18
Granted - time-vesting RSUs	64,550	3.29
Vested	(84,669)	5.96
Forfeited	(42,000)	3.65
Outstanding as of April 30, 2023	7,039,970	\$ 5.16
Granted - time-vesting RSUs	400,197	2.36
Vested	(22,732)	4.11
Forfeited	(136,483)	4.75
Outstanding as of July 31, 2023	7,280,952	\$ 5.03

On December 5, 2022, 2,249,890 RSUs were awarded to senior management under the FY 2023 LTI Plan, which included 1,124,953 PSUs and 1,124,937 time-based vesting RSUs. The PSUs were valued based on a Monte-Carlo Simulation, and the estimated fair value of the relative TSR PSUs was \$5.50 per share. The PSUs and time-based vesting RSUs are expensed over the three-year service period.

In addition to the awards granted to senior management, during the nine months ended July 31, 2023, the Board also granted a total of 3,121,180 time-based vesting RSUs to certain salaried employees to promote ownership of the Company's equity and retention. The time-based vesting RSUs granted during the nine months ended July 31, 2023 vest at a rate of one-third of the total number of RSUs granted on each of the first three anniversaries of the date of grant.

PSUs are issued assuming participants achieve 100% target performance. The Company also reserves additional shares assuming the maximum performance targets are met.

Restricted Stock Units	Shares	Weighted-Average Fair Value
Outstanding as of October 31, 2023	6,543,138	\$ 5.06
Granted - time-vesting RSUs ⁽¹⁾	4,893,269	1.32
Vested	(1,990,154)	7.22
Forfeited	(49,198)	3.51
Outstanding as of January 31, 2024	<u>9,397,055</u>	<u>\$ 2.67</u>

(1) This total includes only time-vesting RSUs and does not include the contingent RSUs or contingent PSUs discussed above in this note.

Note 17. Commitments and Contingencies

Service Agreements

Under the provisions of its service agreements, the Company provides services to maintain, monitor, and repair customer power plants to meet minimum operating levels. Under the terms of such service agreements, the particular power plant must meet a minimum operating output during defined periods of the term. If minimum output falls below the contract requirement, the Company may be subject to performance penalties and/or may be required to repair or replace the customer's fuel cell module(s).

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Power Purchase Agreements

Under the terms of the Company's PPAs, customers agree to purchase power or other values streams delivered such as hydrogen, steam, water, and/or carbon from the Company's fuel cell power platforms plants at negotiated rates. Electricity rates are generally a function of the customers' current and estimated future electricity pricing available from the grid. As owner or lessee of the power platforms, plants, the Company is responsible for all operating costs necessary to maintain, monitor and repair the power platforms, plants. Under certain agreements, the Company is also responsible for procuring fuel, generally natural gas or biogas, to run the power platforms, plants. In addition, under the terms of some of the PPAs, the Company may be subject to a performance penalty if the Company does not meet certain performance requirements.

Project Fuel Exposure

Certain of our PPAs for project assets in our generation operating portfolio and project assets under construction expose us to fluctuating fuel price risks as well as the risk of being unable to procure the required amounts of fuel and the lack of alternative available fuel sources. We seek to mitigate our fuel risk using strategies including: (i) fuel cost reimbursement mechanisms in our PPAs to allow for pass through of fuel costs (full or partial) where possible, which we have done with our 14.9 MW operating project in Bridgeport, CT; (ii) procuring fuel under fixed price physical supply contracts with investment grade counterparties, which we have done for twenty years for our Tulare BioMAT project, the initial seven years of the eighteen year PPA for our LIPA Yaphank Project the initial two (through September 2028), six years of the twenty year PPA for our 14.0 MW and 2.8 MW Derby project projects (through October 2029), and the initial two years of the twenty year hydrogen power purchase agreement for our Toyota project, project (through May of 2025); and (iii) potentially entering into future financial hedges with investment grade counterparties to offset potential negative market fluctuations. The Company does not take

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a fundamental view on natural gas or other commodity pricing and seeks commercially available means to reduce commodity exposure.

There are currently three projects in development with fuel sourcing risk, which are the Toyota project, which requires procurement of RNG, and our Derby, CT 14.0 MW and 2.8 MW projects, both of which require natural gas for which there is no pass-through mechanism. Two-year fuel supply contracts have been executed for the Toyota project and the 14.0 MW project in Derby, CT. The Company will look to extend the duration of these contracts should market and credit conditions allow. Fuel sourcing and risk mitigation strategies for the 2.8 MW project in Derby, CT are being assessed and will be implemented as project operational dates become firm. Such strategies may require cash collateral or reserves to secure fuel or related contracts. If the Company is unable to secure fuel on favorable economic terms, it may result in impairment charges to the Derby project assets and further charges for the Toyota project asset charges.

While The Company net settled certain natural gas purchases under a previous normal purchase normal sale contract designation during the fourth quarter of fiscal year 2023 which resulted in a change to mark-to-market accounting. The Company is pursuing alternative sources of RNG for recorded a \$1.9 million loss associated with the Toyota project, charges are being recorded to cost of generation revenues for any project expenditures currently expected to be unrecoverable. To date, \$42.7 million in charges have been recorded, which includes \$6.2 million and \$6.9 million in charges natural gas contract derivative for the three months ended July 31, 2023 and 2022, respectively, and \$17.8 million and \$14.0 million in charges for January 31, 2024. The Company has recorded the nine months ended July 31, 2023 and 2022, respectively. As of July 31, 2023, the carrying value of the Toyota project derivative asset within other assets on the Consolidated Balance Sheet totaled \$22.3 million Sheets, which represents the carrying had an estimated fair value of inventory components that could be redeployed for alternative use.

Since the war in Ukraine began in February \$2.3 million and \$4.1 million as of 2022, there has been significant volatility in the global January 31, 2024 and October 31, 2023, respectively. The natural gas markets. As contract derivative is classified as a result, in fiscal year 2022, Level 2 financial asset since the Company performed a recoverability analysis with respect to the Derby 14.0 MW and 2.8 MW projects and concluded that the assets are recoverable and therefore an impairment had not occurred. Should values can be determined based on readily observable inputs for underlying natural gas prices continue to rise, there could be an impairment in future periods. No triggering events occurred during the first nine months of fiscal year 2023. The Company has risk mitigation strategies that it may implement in an effort to mitigate potential impacts including the ability to extend commercial operations dates. As of July 31, 2023, the carrying value of the 14.0 MW project in Derby, CT totaled \$52.9 million and the carrying value of the 2.8 MW project in Derby, CT totaled \$2.3 million. forward prices.

Other

As of July 31, 2023 January 31, 2024, the Company had unconditional purchase commitments aggregating \$86.9 million \$95.4 million for materials, supplies and services in the normal course of business.

Legal Proceedings

From time to time, the Company is involved in legal proceedings, including, but not limited to, regulatory proceedings, claims, mediations, arbitrations and litigation, arising out of the ordinary course of its business ("Legal Proceedings").

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Although the Company cannot assure the outcome of such Legal Proceedings, management presently believes that the result of such Legal Proceedings, either individually, or in the aggregate, will not have a material adverse effect on the Company's consolidated financial statements, and no material amounts have been accrued in the Company's consolidated financial statements with respect to these matters.

Note 18. Subsequent Events

On August 18, 2023, FuelCell Energy Finance Holdco, LLC ("Holdco Borrower"), a wholly owned subsidiary of FCEF, which, in turn, is a wholly owned subsidiary of Parent, entered into: (i) a Credit Agreement (the "Senior Back Leverage Credit Agreement") with, by and among Liberty

Bank, in its capacities as a lender ("Liberty Lender"), administrative agent (the "Senior Administrative Agent"), and lead arranger, and Amalgamated Bank, in its capacity as a lender ("Amalgamated Lender" and, collectively with Liberty Lender, the "Senior Back Leverage Lenders"), for a term loan facility in an amount not to exceed an aggregate of \$12.0 million to be provided 50% by Liberty Lender and 50% by Amalgamated Lender (such facility, the "Senior Back Leverage Loan Facility," each such term loan, a "Senior Back Leverage Loan" and such term loans together, the "Senior Back Leverage Loans"); and (ii) a Credit Agreement (the "Subordinated Back Leverage Credit Agreement") with Connecticut Green Bank, as administrative agent (the "Subordinated Administrative Agent") and lender ("Subordinated Back Leverage Lender"), for a term loan facility in an amount not to exceed \$8.0 million (such facility, the "Subordinated Back Leverage Loan Facility" and such term loan, the "Subordinated Back Leverage Loan"). The Senior Back Leverage Lenders and the Subordinated Back Leverage Lender are referred to collectively as the "Back Leverage Lenders."

Holdco Borrower's obligations under the Senior Back Leverage Credit Agreement and the Subordinated Back Leverage Credit Agreement are secured by a lien on all of Holdco Borrower's assets, consisting principally of its Class B Member Interests (the "Class B Interests") in Groton Station Fuel Cell Holdco, LLC (the "Groton Tax Equity Holdco"). Class A Membership Interests (the "Class A Interests") in the Groton Tax Equity Holdco are held by East West Bank. Holdco Borrower is also the Managing Member of the Groton Tax Equity Holdco. The Groton Tax Equity Holdco's primary asset is ownership of all of the outstanding equity interests in Groton Station Fuel Cell, LLC (the "Groton Project Company"). The Groton Project Company, in turn, is the owner of the fuel cell power plant at the U.S. Navy Submarine Base New London located in Groton, Connecticut (the "Groton Project"). As additional context concerning the relationship among the parties with respect to the Senior Back Leverage Loan Facility and the Subordinated Back Leverage Loan Facility more fully described below, on December 16, 2022, the Groton Project Company and Parent entered into an Amended and Restated Power Purchase Agreement (the "Amended and Restated PPA") with Connecticut Municipal Electric Energy Cooperative ("CMEEC"), pursuant to which the Groton Project Company agreed to sell to CMEEC, and CMEEC agreed to purchase from the Groton Project Company, all of the electricity output produced by the Groton Project pursuant to the terms and conditions of the Amended and Restated PPA.

At the closing (the "Closing") of each of the Senior Back Leverage Loan Facility and the Subordinated Back Leverage Loan Facility, which occurred simultaneously on August 18, 2023 (the "Closing Date"), the entire amount of each of the Senior Back Leverage Loan Facility and the Subordinated Back Leverage Loan Facility was drawn down in the aggregate amount of \$20.0 million. After payment of fees and transaction costs (including fees to the Back Leverage Lenders and legal costs) of approximately \$0.4 million in the aggregate, the remaining proceeds of approximately \$19.6 million were used as follows: (i) approximately \$1.7 million was used to fund debt service reserve accounts ("DSCR Reserve Accounts") for the Senior Back Leverage Lenders in equal amounts of approximately \$0.83 million for Liberty Lender and approximately \$0.83 million for Amalgamated Lender; (ii) approximately \$6.5 million was used to fund operations and maintenance and module replacement reserve accounts for the Senior Back Leverage Lenders in equal amounts of approximately \$3.25 million for Liberty Lender and approximately \$3.25 million for Amalgamated Lender; (iii) approximately \$0.3 million was used to fund a DSCR Reserve Account for the Subordinated Back Leverage Lender; and (iv) the remaining amount of approximately \$11.1 million was released to Parent from the Back Leverage Lenders. As discussed in additional detail below, simultaneous with the Closing, a portion of the proceeds were used to: (a) make Output Shortfall Payments (which are cash payments required to be made by the Groton Project Company in the event that the Groton Project produces electricity in any year less than the minimum required amount for such year) totaling approximately \$1.3 million, which were deposited into a payment reserve account, and (b) pay approximately \$3.0 million to Connecticut Green Bank, which represented payment, in full, of all outstanding obligations under Parent's loan agreement with Connecticut Green Bank. After taking into account such Output Shortfall Payments and such payment to Connecticut Green Bank, approximately \$6.8 million will be classified as unrestricted cash on the Company's Consolidated Balance Sheet.

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The portion of the Senior Back Leverage Loan provided by Liberty Lender will accrue interest on the unpaid principal amount calculated from the date of such Senior Back Leverage Loan until the maturity date at a rate per annum equal to 6.75%. The portion of the Senior Back Leverage Loan provided by Amalgamated Lender will accrue interest on the unpaid principal amount calculated from the date of such Senior Back Leverage Loan until the maturity date thereof at 6.07% during all times at which a "Carbon Offset Event" is not continuing and 7.32% at all times at which a "Carbon Offset Event" has occurred and is continuing. A "Carbon Offset Event" is deemed to occur if Holdco Borrower, Parent or any direct or indirect subsidiary thereof does not purchase carbon offsets from an Acceptable Carbon Offset Provider (as defined

below) each fiscal year in an amount equal to the lesser of (i) the Annual Carbon Offset Requirement for such fiscal year, which is derived based on a formula equal to the outstanding balance of the Senior Back Leverage Loan provided by Amalgamated Lender multiplied by the Groton Project's annual carbon emissions for such year and divided by the total project costs of the Groton Project, and (ii) the Annual Carbon Offset Cap for such fiscal year, which is \$12.66 multiplied by the Annual Carbon Offset Requirement and divided by the Carbon Offset Price, for such fiscal year. The "Carbon Offset Price" means the price, per metric ton of carbon dioxide, of the carbon offsets available for purchase from an Acceptable Carbon Offset Provider. An "Acceptable Carbon Offset Provider" is either Climate Vault or any other seller of carbon offsets acceptable to Amalgamated Lender.

Quarterly principal amortization and interest payments are required to be made by Holdco Borrower on the Senior Back Leverage Loans based on a ten-year amortization period. The Senior Back Leverage Loans have a seven-year term, maturing on August 18, 2030, at which time all outstanding principal is due.

The Subordinated Back Leverage Loan will accrue interest at a rate per annum equal to 8% for the period of time prior to the "Step Down Date" and, after the "Step Down Date," at the lesser of 8% or the interest rate on a 10 year U.S. Treasury Note plus 275 basis points (subject to a minimum floor of 5% per annum). The "Step Down Date" is the date on which both of the following events have occurred: Holdco Borrower has purchased East West Bank's Class A Interests in the Groton Tax Equity Holdco and the Senior Back Leverage Loans have been repaid in full. Interest is payable each quarter based on an agreed upon schedule.

Pursuant to the Subordinated Back Leverage Loan Facility, during the "Interest Only Period" (as defined below), Holdco Borrower is required to make quarterly payments of principal in amounts equal to 50% of excess cash flow available to Holdco Borrower. For purposes of the foregoing, excess cash flow is all excess cash flow of Holdco Borrower after the payment of required principal and interest on the Senior Back Leverage Loans, required deposits in the various reserve accounts, the payment of interest on the Subordinated Back Leverage Loan and payment of Holdco Borrower's operating expenses. Following the end of the "Interest Only Period," principal and interest payments are required to be made quarterly in quarterly level payments ("mortgage style") of principal and interest until the maturity date, which is the first to occur of 20 years following the Groton Project's commercial operations date and termination of the Amended and Restated PPA. The maturity date of the Subordinated Back Leverage Loan Facility is currently contemplated to be September 30, 2038. The "Interest Only Period" is the period beginning on the Closing Date and ending the first to occur of (i) eighty-four months after the Closing Date; or (ii) the date the Senior Back Leverage Loan Facility has been fully repaid.

Each of the Senior Back Leverage Credit Agreement and the Subordinated Back Leverage Credit Agreement contains certain reporting requirements and other affirmative and negative covenants which are customary for transactions of this type. Included in the covenants are covenants that: (i) Holdco Borrower maintain a "Senior" debt service coverage ratio (which is computed taking into account debt service obligations on the Senior Back Leverage Loans) of not less than 1.20:1.00 (based on the trailing 12 months and tested every quarter) and a "Total" debt service coverage ratio (which is computed taking into account debt service obligations on both the Senior Back Leverage Loans and the Subordinated Back Leverage Loan) of not less than 1.10:1.00 (based on the trailing 12 months and tested on a quarterly basis); (ii) Holdco Borrower may make distributions or dividends only if the foregoing debt to equity coverage ratios have been satisfied and Holdco Borrower is not in default under any provisions of either the Senior Back Leverage Credit Agreement or the Subordinated Back Leverage Credit Agreement, including having made all required deposits into reserve accounts; (iii) Holdco Borrower is required to exercise its right under the Groton Tax Equity Holdco limited liability company agreement to acquire the Class A Interests from East West Bank during the ninety day period beginning on the "Flip Point" (which, pursuant to the Groton Tax Equity Holdco limited liability company agreement, is the date on which the holder of Class A Interests has realized a certain return on investment and, accordingly, Holdco Borrower, as holder of the Class B Interests, has the right to purchase the Class A Interests); and (iv) the consent of the Senior Administrative Agent is required prior to Holdco Borrower's taking certain material actions under the Groton Tax Equity Holdco limited liability company agreement. Each of the Senior Back Leverage Credit Agreement and the Subordinated Back Leverage Credit

cross default (meaning that a default under the Senior Back Leverage Loan Facility shall be deemed a default under the Subordinated Back Leverage Loan Facility and vice versa) or if CMEEC should become insolvent, is in bankruptcy or commits a specified number of payment defaults with regard to its payment obligations to the Groton Project Company.

The Senior Back Leverage Loans may be prepaid at any time at the option of Holdco Borrower provided that (i) each prepayment on or prior to the second anniversary of the Closing Date shall require a prepayment fee of 3% of the principal amount being prepaid; (ii) each prepayment after the second anniversary of the Closing Date but on or prior to the fourth anniversary of the Closing Date shall require a prepayment fee of 2% of the principal amount being prepaid; and (iii) each prepayment after the fourth anniversary of the Closing Date but on or prior to the seventh anniversary of the Closing Date shall require a prepayment fee of 1% of the principal amount being prepaid. The Subordinated Back Leverage Loan may be prepaid at any time without premium or penalty.

Termination of Certain Agreements with Connecticut Green Bank

The Company had a long-term loan agreement with Connecticut Green Bank, which provided the Company with a loan of \$1.8 million (as amended from time to time, the "Green Bank Loan Agreement"). On and effective as of December 19, 2019, the Company and Connecticut Green Bank entered into an amendment to the Green Bank Loan Agreement (the "Green Bank Amendment"). Upon the execution of the Green Bank Amendment on December 19, 2019, Connecticut Green Bank made an additional loan to the Company in the aggregate principal amount of \$3.0 million, which was to be used (i) first, to pay closing fees related to the May 9, 2019 acquisition of the Bridgeport Fuel Cell Project and the related subordinated credit agreement (which has since been terminated), other fees and interest, and (ii) thereafter, for general corporate purposes. In May 2023, \$1.8 million of the then-outstanding balance under the Green Bank Loan Agreement was paid by the Company.

In connection with the Closing of the Senior Back Leverage Loan Facility and the Subordinated Back Leverage Loan Facility and using a portion of the proceeds from such facilities, on the Closing Date, the Company paid approximately \$3.0 million to Connecticut Green Bank as payment, in full, of all outstanding obligations under the Green Bank Loan Agreement. No early termination penalties were incurred in connection with this payment. Upon payment of such amount by the Company to Connecticut Green Bank on the Closing Date, (i) all of the Company's obligations under the Green Bank Loan Agreement, the related note, and any other related loan agreements were satisfied, terminated and released (except for any such provisions that expressly survive such termination), (ii) all collateral and liens under the related security agreements were released, and (iii) the Green Bank Loan Agreement, the related note, the related security agreements, and any other related loan agreements were terminated.

Amendment No. 4 to the EMTEC Joint Development Agreement

On August 25, 2023, the Company and EMTEC entered into Amendment No. 4 to the EMTEC Joint Development Agreement ("Amendment No. 4"), effective as of August 31, 2023. In Amendment No. 4, the Company and EMTEC agreed to further extend the term of the EMTEC Joint Development Agreement such that it will end on March 31, 2024 (unless terminated earlier) and to further increase the maximum amount of research costs to be reimbursed by EMTEC from \$60.0 million to \$67.0 million. Amendment No. 4 is intended to allow the parties the opportunity to continue (i) derisking of the Generation 2 Technology fuel cell module demonstration prototype and (ii) the joint marketing and sales efforts to inform development of a new business framework between the parties beyond the current agreement structure.

Open Market Sale Agreement

Subsequent to July 31, 2023, the Company sold approximately 2.0 million shares of its common stock under the Open Market Sale Agreement at an average price of \$2.14 per share resulting in gross proceeds of approximately \$4.3 million before deducting sales commissions and fees, and net proceeds of approximately \$4.2 million after deducting sales commissions and fees totaling approximately \$0.1 million.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**FORWARD-LOOKING STATEMENTS**

This Quarterly Report on Form 10-Q contains both historical statements and forward-looking statements that the Company believes to be "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 that involve risks, uncertainties and assumptions. The (the "PSLRA"). All statements contained other than statements of historical fact included in this report that are not purely historical are forward-looking statements that are subject to the safe harbors created under the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, Form 10-K, including statements regarding our the Company's future financial condition, results of operations, plans, objectives, expectations, beliefs, intentions future performance, business operations and strategies for the future. When used in this report, the words business prospects, are forward-looking statements. Words such as "expects," "anticipates," "estimates," "goals," "projects," "intends," "plans," "believes," "predicts," "should," "seeks," "will," "could," "would," "may," "forecast," and similar expressions and variations of such words are intended to identify forward-looking statements. statements and are included, along with this statement, for purposes of complying with the safe harbor provisions of the PSLRA. Forward-looking statements are neither historical facts, nor assurances of future performance. Instead, such statements are based only on our beliefs, expectations, and assumptions regarding the future. As such, the realization of matters expressed in forward-looking statements involves inherent risks and uncertainties. Such statements relate to, among other things, the following: (i) the development and commercialization by FuelCell Energy, Inc. and its subsidiaries of fuel cell technology and products and the market for such products; (ii) expected operating results such as revenue growth and earnings; (iii) the expected timing of completion of our ongoing projects; (iv) (iii) our business plans and strategies; (v) (iv) the markets in which we expect to operate; (v) expected operating results such as revenue growth and earnings; (vi) our belief that we have sufficient liquidity to fund our business operations for the next 12 months; (vii) future funding under Advanced Technologies contracts; (viii) future financing for projects, including equity and debt investments by investors and commercial bank financing, as well as overall financial market conditions; (ix) the expected cost competitiveness of our technology; and (x) our ability to achieve our sales plans, manufacturing capacity expansion plans, market access and market expansion goals, and cost reduction targets.

The forward-looking statements contained in this report are subject to risks and uncertainties, known and unknown, that could cause actual results and future events to differ materially from those set forth in or contemplated by the forward-looking statements, including, without limitation, the risks described in our Annual Report on Form 10-K for the fiscal year ended **October 31, 2022** **October 31, 2023** and in the section below entitled "Item 1A. Risk Factors," and the following risks and uncertainties: general risks associated with product development and manufacturing; general economic conditions; changes in interest rates, which may impact project financing; supply chain disruptions; changes in the utility regulatory environment; changes in the utility industry and the markets for distributed generation, distributed hydrogen, and fuel cell power plants configured for carbon capture or carbon separation; potential volatility of commodity prices that may adversely affect our projects; availability of government subsidies and economic incentives for alternative energy technologies; our ability to remain in compliance with U.S. federal and state and foreign government laws and regulations and the listing rules of The Nasdaq Stock Market ("Nasdaq"); Market; rapid technological change; competition; the risk that our bid awards will not convert to contracts or that our contracts will not convert to revenue; market acceptance of our products; changes in accounting policies or practices adopted voluntarily or as required by accounting principles generally accepted in the United States; States ("U.S. GAAP"); factors affecting our liquidity position and financial condition; limitations on our ability to raise capital in the equity markets due to the limited number of shares of common stock currently available for issuance; government appropriations; the ability of the government and third parties to terminate their development contracts at any time; the ability of the government to exercise "march-in" rights with respect to certain of our patents; our ability to successfully market and sell our products internationally; our ability to develop new products to achieve our long-term revenue targets; our ability to implement our strategy; our ability to reduce our leveled cost of energy and deliver on our cost reduction strategy generally; our ability to protect our intellectual property; litigation and other proceedings; the risk that commercialization of our new products will not occur when anticipated or, if it does, that we will not have adequate capacity to satisfy demand; our need for and the availability of additional financing; our ability to generate positive cash flow from operations; our ability to service our long-term debt; our ability to increase the output and longevity of our platforms and to meet the performance requirements of our contracts; our ability to expand our customer base and maintain relationships with our largest customers and strategic business allies; and concerns with, threats of, or the consequences of, pandemics, contagious diseases or health epidemics, including the novel coronavirus ("COVID-19"), and resulting supply chain disruptions, shifts in clean energy demand, impacts to our customers' capital budgets and investment plans, impacts to our project schedules, impacts to our ability to service existing projects, and impacts on the demand for our products products.

We cannot assure you that: we will be able to meet any of our development or commercialization schedules; any of our new products or technologies, once developed, will be commercially successful; our SureSource power plants will be commercially successful; we will be able to obtain financing or raise capital to achieve our business plans; the government will

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appropriate the funds anticipated by us under our government contracts; the government will not exercise its right to terminate any or all of our government contracts; or we will be able to achieve any other result anticipated in any other forward-looking statement contained herein.

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Investors are cautioned that forward-looking statements are not guarantees of future performance and involve risks and uncertainties, many of which are beyond our ability to control, and that actual results may differ materially from those projected in the forward-looking statements as a result of various factors discussed herein. Any forward-looking statement made by us in this report is based only on information currently available to us and speaks only as of the date on which it is made. We undertake no obligation to publicly update any forward-looking statement, whether written or oral, that may be made from time to time, whether as a result of new information, future developments or otherwise.

Management's Discussion and Analysis of Financial Condition and Results of Operations is provided as a supplement to the accompanying financial statements and footnotes to help provide an understanding of our financial condition, changes in our financial condition and results of operations. 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, as well as management's assessment of the Company's ability to meet its obligations as they come due over the next twelve months. Actual results could differ from those estimates. Estimates are used in accounting for, among other things, revenue recognition, lease right-of-use assets and liabilities, loss accruals on service agreements, excess, slow-moving and obsolete inventories, product warranty accruals, loss accruals on service agreements, share-based compensation expense, allowance for doubtful accounts, depreciation and amortization, impairment of goodwill and in-process research and development intangible assets, impairment of long-lived assets (including project assets), lease liabilities and right-of-use ("ROU") assets, valuation of derivatives, contingencies, and in management's assessment of the Company's ability to meet its obligations as they come due over the next twelve months. 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. Due to the inherent uncertainty involved in making estimates, actual results in future periods may differ from those estimates. The following discussion should be read in conjunction with information included in our Annual Report on Form 10-K for the fiscal year ended **October 31, 2022** **October 31, 2023** filed with the Securities and Exchange Commission ("SEC"). Unless otherwise indicated, the terms "Company", "FuelCell Energy", "we", "us", and "our" refer to FuelCell Energy, Inc. and its subsidiaries. All tabular dollar amounts are in thousands.

OVERVIEW

Headquartered in Danbury, Connecticut, FuelCell Energy **has leveraged five decades of research and development to become** **is** a global leader in delivering environmentally responsible distributed baseload energy platform solutions through our proprietary fuel cell technology. **Our current** **Today, we offer** commercial technology that produces **clean** electricity, heat, **clean** hydrogen, and water **while separating** and **is also capable of recovering and capturing** carbon for utilization and/or sequestration, depending on **the** product configuration and application. We **also** **continue to invest in developing** product development and commercializing **future** technologies **that are** expected to add new capabilities to our platforms' abilities to deliver hydrogen and long duration hydrogen-based energy storage through our solid oxide technologies, as well as further enhance our existing platforms' carbon capture solutions.

FuelCell Energy is **a global leader in focused on advancing** sustainable clean energy technologies that address some of the world's most critical challenges around energy access, security, **resilience, reliability, affordability**, safety and environmental stewardship. As a leading global

manufacturer of proprietary fuel cell technology platforms, FuelCell Energy is uniquely positioned to serve customers worldwide with sustainable products and solutions for industrial and commercial businesses, utilities, governments, **municipalities**, and **communities**.

FuelCell Energy, based in Connecticut, was founded in 1969 as a New York corporation to provide applied research and development services on a contract basis. We completed our initial public offering in 1992 and reincorporated in Delaware in 1999. We began selling stationary fuel cell power plants commercially in 2003.

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RECENT DEVELOPMENTS

Groton Back-Leverage Financing

On August 18, 2023, FuelCell Energy Finance Holdco, LLC ("Holdco Borrower"), a wholly owned subsidiary of FuelCell Energy Finance, LLC ("FCEF"), which, in turn, is a wholly owned subsidiary of FuelCell Energy, Inc. ("Parent"), entered into: (i) a Credit Agreement (the "Senior Back Leverage Credit Agreement") with, by and among Liberty Bank, in its capacities as a lender ("Liberty Lender"), administrative agent (the "Senior Administrative Agent"), and lead arranger, and Amalgamated Bank, in its capacity as a lender ("Amalgamated Lender" and, collectively with Liberty Lender, the "Senior Back Leverage Lenders"), for a term loan facility in an amount not to exceed an aggregate of \$12.0 million to be provided 50% by Liberty Lender and 50% by Amalgamated Lender (such facility, the "Senior Back Leverage Loan Facility," each such term loan, a "Senior Back Leverage Loan" and such term loans together, the "Senior Back Leverage Loans"); and (ii) a Credit Agreement (the "Subordinated Back Leverage Credit Agreement") with Connecticut Green Bank, as administrative agent (the "Subordinated Administrative Agent") and lender ("Subordinated Back Leverage Lender"), for a term loan facility in an amount not to exceed \$8.0 million (such facility, the "Subordinated Back Leverage Loan Facility" and such term loan, the "Subordinated Back Leverage Loan"). The Senior Back Leverage Lenders and the Subordinated Back Leverage Lender are referred to collectively as the "Back Leverage Lenders."

Holdco Borrower's obligations under the Senior Back Leverage Credit Agreement and the Subordinated Back Leverage Credit Agreement are secured by a lien on all of Holdco Borrower's assets, consisting principally of its Class B Member Interests (the "Class B Interests") in Groton Station Fuel Cell Holdco, LLC (the "Groton Tax Equity Holdco"). Class A Membership Interests (the "Class A Interests") in the Groton Tax Equity Holdco are held by East West Bank. Holdco Borrower is also the Managing Member of the Groton Tax Equity Holdco. The Groton Tax Equity Holdco's primary asset is ownership of all of the outstanding equity interests in Groton Station Fuel Cell, LLC (the "Groton Project Company"). The Groton Project Company, in turn, is the owner of the fuel cell power plant at the U.S. Navy Submarine Base New London located in Groton, Connecticut (the "Groton Project"). As additional context concerning the relationship among the parties with respect to the Senior Back Leverage Loan Facility and the Subordinated Back Leverage Loan Facility more fully described below, on December 16, 2022, the Groton Project Company and Parent entered into an Amended and Restated Power Purchase Agreement (the "Amended and Restated PPA") with Connecticut Municipal Electric Energy Cooperative ("CMEEC"), pursuant to which the Groton Project Company agreed to sell to CMEEC, and CMEEC agreed to purchase from the Groton Project Company, all of the electricity output produced by the Groton Project pursuant to the terms and conditions of the Amended and Restated PPA.

At the closing (the "Closing") of each of the Senior Back Leverage Loan Facility and the Subordinated Back Leverage Loan Facility, which occurred simultaneously on August 18, 2023 (the "Closing Date"), the entire amount of each of the Senior Back Leverage Loan Facility and the Subordinated Back Leverage Loan Facility was drawn down in the aggregate amount of \$20.0 million. After payment of fees and transaction costs (including fees to the Back Leverage Lenders and legal costs) of approximately \$0.4 million in the aggregate, the remaining proceeds of approximately \$19.6 million were used as follows: (i) approximately \$1.7 million was used to fund debt service reserve accounts ("DSCR Reserve Accounts") for the Senior Back Leverage Lenders in equal amounts of approximately \$0.83 million for Liberty Lender and approximately \$0.83 million for Amalgamated Lender; (ii) approximately \$6.5 million was used to fund operations and maintenance and module replacement reserve accounts for the Senior Back Leverage Lenders in equal amounts of approximately \$3.25 million for Liberty Lender and approximately \$3.25 million for Amalgamated Lender; (iii) approximately \$0.3 million was used to fund a DSCR Reserve Account for the Subordinated Back Leverage Lender; and (iv) the remaining amount of approximately \$11.1 million was released to Parent from the Back

Leverage Lenders. As discussed in additional detail below, simultaneous with the Closing, a portion of the proceeds were used to: (a) make Output Shortfall Payments (which are cash payments required to be made by the Groton Project Company in the event that the Groton Project produces electricity in any year less than the minimum required amount for such year) totaling approximately \$1.3 million, which were deposited into a payment reserve account, and (b) pay approximately \$3.0 million to Connecticut Green Bank, which represented payment, in full, of all outstanding obligations under Parent's loan agreement with Connecticut Green Bank (which is discussed in additional detail below). After taking into account such Output Shortfall Payments and such payment to Connecticut Green Bank, approximately \$6.8 million will be classified as unrestricted cash on the Company's Consolidated Balance Sheet.

The portion of the Senior Back Leverage Loan provided by Liberty Lender will accrue interest on the unpaid principal amount calculated from the date of such Senior Back Leverage Loan until the maturity date at a rate per annum equal to 6.75%. The portion of the Senior Back Leverage Loan provided by Amalgamated Lender will accrue interest on the unpaid principal amount calculated from the date of such Senior Back Leverage Loan until the maturity date thereof at

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6.07% during all times at which a "Carbon Offset Event" is not continuing and 7.32% at all times at which a "Carbon Offset Event" has occurred and is continuing. A "Carbon Offset Event" is deemed to occur if Holdco Borrower, Parent or any direct or indirect subsidiary thereof does not purchase carbon offsets from an Acceptable Carbon Offset Provider (as defined below) each fiscal year in an amount equal to the lesser of (i) the Annual Carbon Offset Requirement for such fiscal year, which is derived based on a formula equal to the outstanding balance of the Senior Back Leverage Loan provided by Amalgamated Lender multiplied by the Groton Project's annual carbon emissions for such year and divided by the total project costs of the Groton Project, and (ii) the Annual Carbon Offset Cap for such fiscal year, which is \$12.66 multiplied by the Annual Carbon Offset Requirement and divided by the Carbon Offset Price for such fiscal year. The "Carbon Offset Price" means the price, per metric ton of carbon dioxide, of the carbon offsets available for purchase from an Acceptable Carbon Offset Provider. An "Acceptable Carbon Offset Provider" is either Climate Vault or any other seller of carbon offsets acceptable to Amalgamated Lender.

Quarterly principal amortization and interest payments are required to be made by Holdco Borrower on the Senior Back Leverage Loans based on a ten-year amortization period. The Senior Back Leverage Loans have a seven-year term, maturing on August 18, 2030, at which time all outstanding principal is due.

The Subordinated Back Leverage Loan will accrue interest at a rate per annum equal to 8% for the period of time prior to the "Step Down Date" and, after the "Step Down Date," at the lesser of 8% or the interest rate on a 10 year U.S. Treasury Note plus 275 basis points (subject to a minimum floor of 5% per annum). The "Step Down Date" is the date on which both of the following events have occurred: Holdco Borrower has purchased East West Bank's Class A Interests in the Groton Tax Equity Holdco and the Senior Back Leverage Loans have been repaid in full. Interest is payable each quarter based on an agreed upon schedule.

Pursuant to the Subordinated Back Leverage Loan Facility, during the "Interest Only Period" (as defined below), Holdco Borrower is required to make quarterly payments of principal in amounts equal to 50% of excess cash flow available to Holdco Borrower. For purposes of the foregoing, excess cash flow is all excess cash flow of Holdco Borrower after the payment of required principal and interest on the Senior Back Leverage Loans, required deposits in the various reserve accounts, the payment of interest on the Subordinated Back Leverage Loan and payment of Holdco Borrower's operating expenses. Following the end of the "Interest Only Period," principal and interest payments are required to be made quarterly in quarterly level payments ("mortgage style") of principal and interest until the maturity date, which is the first to occur of 20 years following the Groton Project's commercial operations date and termination of the Amended and Restated PPA. The maturity date of the Subordinated Back Leverage Loan Facility is currently contemplated to be September 30, 2038. The "Interest Only Period" is the period beginning on the Closing Date and ending the first to occur of (i) eighty-four months after the Closing Date; or (ii) the date the Senior Back Leverage Loan Facility has been fully repaid.

Each of the Senior Back Leverage Credit Agreement and the Subordinated Back Leverage Credit Agreement contains certain reporting requirements and other affirmative and negative covenants which are customary for transactions of this type. Included in the covenants are covenants that: (i) Holdco Borrower maintain a "Senior" debt service coverage ratio (which is computed taking into account debt service obligations on the Senior Back Leverage Loans) of not less than 1.20:1.00 (based on the trailing 12 months and tested every quarter) and a

"Total" debt service coverage ratio (which is computed taking into account debt service obligations on both the Senior Back Leverage Loans and the Subordinated Back Leverage Loan) of not less than 1.10:1.00 (based on the trailing 12 months and tested on a quarterly basis); (ii) Holdco Borrower may make distributions or dividends only if the foregoing debt to equity coverage ratios have been satisfied and Holdco Borrower is not in default under any provisions of either the Senior Back Leverage Credit Agreement or the Subordinated Back Leverage Credit Agreement, including having made all required deposits into reserve accounts; (iii) Holdco Borrower is required to exercise its right under the Groton Tax Equity Holdco limited liability company agreement to acquire the Class A Interests from East West Bank during the ninety day period beginning on the "Flip Point" (which, pursuant to the Groton Tax Equity Holdco limited liability company agreement, is the date on which the holder of Class A Interests has realized a certain return on investment and, accordingly, Holdco Borrower, as holder of the Class B Interests, has the right to purchase the Class A Interests); and (iv) the consent of the Senior Administrative Agent is required prior to Holdco Borrower's taking certain material actions under the Groton Tax Equity Holdco limited liability company agreement. Each of the Senior Back Leverage Credit Agreement and the Subordinated Back Leverage Credit Agreement also contains customary representations and warranties and customary events of default that cause, or entitle the Lenders to cause, the outstanding loans to become immediately due and payable. In addition to customary events of default for transactions of this kind, the events of default include if a Change of Control occurs (meaning the Company no longer directly or indirectly owns Holdco Borrower), a cross default (meaning that a default under the Senior Back

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Leverage Loan Facility shall be deemed a default under the Subordinated Back Leverage Loan Facility and vice versa) or if CMEEC should become insolvent, is in bankruptcy or commits a specified number of payment defaults with regard to its payment obligations to the Groton Project Company.

The Senior Back Leverage Loans may be prepaid at any time at the option of Holdco Borrower provided that (i) each prepayment on or prior to the second anniversary of the Closing Date shall require a prepayment fee of 3% of the principal amount being prepaid; (ii) each prepayment after the second anniversary of the Closing Date but on or prior to the fourth anniversary of the Closing Date shall require a prepayment fee of 2% of the principal amount being prepaid; and (iii) each prepayment after the fourth anniversary of the Closing Date but on or prior to the seventh anniversary of the Closing Date

shall require a prepayment fee of 1% of the principal amount being prepaid. The Subordinated Back Leverage Loan may be prepaid at any time without premium or penalty.

Termination of Certain Agreements with Connecticut Green Bank

The Company had a long-term loan agreement with Connecticut Green Bank, which provided the Company with a loan of \$1.8 million (as amended from time to time, the "Green Bank Loan Agreement"). On and effective as of December 19, 2019, the Company and Connecticut Green Bank entered into an amendment to the Green Bank Loan Agreement (the "Green Bank Amendment"). Upon the execution of the Green Bank Amendment on December 19, 2019, Connecticut Green Bank made an additional loan to the Company in the aggregate principal amount of \$3.0 million, which was to be used (i) first, to pay closing fees related to the May 9, 2019 acquisition of the Bridgeport Fuel Cell Project and the related subordinated credit agreement (which has since been terminated), other fees and interest, and (ii) thereafter, for general corporate purposes. In May 2023, \$1.8 million of the then-outstanding balance under the Green Bank Loan Agreement was paid by the Company.

In connection with the Closing of the Senior Back Leverage Loan Facility and the Subordinated Back Leverage Loan Facility and using a portion of the proceeds from such facilities, on the Closing Date, the Company paid approximately \$3.0 million to Connecticut Green Bank as payment, in full, of all outstanding obligations under the Green Bank Loan Agreement (as defined below). No early termination penalties were incurred in connection with this payment. Upon payment of such amount by the Company to Connecticut Green Bank on the Closing Date, (i) all of the Company's obligations under the Green Bank Loan Agreement, the related note, and any other related loan agreements were satisfied, terminated and released (except for any such provisions that expressly survive such termination), (ii) all collateral and liens under the related security agreements were released, and (iii) the Green Bank Loan Agreement, the related note, the related security agreements, and any other related loan agreements were terminated.

Amendment No. 4 to the EMTEC Joint Development Agreement

On August 25, 2023, the Company and ExxonMobil Technology and Engineering Company (f/k/a ExxonMobil Research and Engineering Company) ("EMTEC") entered into Amendment No. 4 to the Joint Development Agreement between the Company and EMTEC, effective as of August 31, 2023 (such amendment, "Amendment No. 4" and such agreement, as amended, the "EMTEC Joint Development Agreement"). In Amendment No. 4, the Company and EMTEC agreed to further extend the term of the EMTEC Joint Development Agreement such that it will end on March 31, 2024 (unless terminated earlier) and to further increase the maximum amount of research costs to be reimbursed by EMTEC from \$60.0 million to \$67.0 million. Amendment No. 4 is intended to allow the parties the opportunity to continue (i) derisking of the Generation 2 Technology fuel cell module demonstration prototype and (ii) the joint marketing and sales efforts to inform development of a new business framework between the parties beyond the current agreement structure.

Open Market Sale Agreement

Subsequent to July 31, 2023, the Company sold approximately 2.0 million shares of its common stock under the Open Market Sale Agreement (as defined below) at an average price of \$2.14 per share resulting in gross proceeds of approximately \$4.3 million before deducting sales commissions and fees, and net proceeds of approximately \$4.2 million after deducting sales commissions and fees totaling approximately \$0.1 million.

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RESULTS OF OPERATIONS

Management evaluates our results of operations and cash flows using a variety of key performance indicators, including revenues compared to prior periods and internal forecasts, costs of our products and results of our cost reduction initiatives, and operating cash use. These are discussed throughout the "Results of Operations" and "Liquidity and Capital Resources" sections. Results of Operations are presented in accordance with accounting principles generally accepted in the United States ("GAAP").

Comparison of Three Months Ended July 31, 2023 January 31, 2024 and 2022 2023

Revenues and Costs of revenues

Our revenues and cost of revenues for the three months ended July 31, 2023 January 31, 2024 and 2022 2023 were as follows:

(dollars in thousands)	Three Months Ended July 31,		Change		Three Months Ended January 31,		Change	
	2023	2022	\$	%	2024	2023	\$	%
Total revenues	\$ 25,510	\$ 43,104	\$ (17,594)	(41)%	\$ 16,691	\$ 37,073	\$ (20,382)	(55)%
Total costs of revenues	33,725	47,284	(13,559)	(29)%	28,416	31,836	(3,420)	(11)%
Gross loss	\$ (8,215)	\$ (4,180)	\$ (4,035)	(97)%				
Gross (loss) profit			\$ (11,725)	\$ 5,237	\$ (16,962)	324%		
Gross margin	(32.2)%	(9.7)%			(70.2)%	14.1%		

Total revenues for the three months ended July 31, 2023 January 31, 2024 of \$25.5 million \$16.7 million reflects a decrease of \$17.6 million \$20.4 million from \$43.1 million \$37.1 million for the same period in the prior year. Cost of revenues for the three months ended July 31, 2023 January 31, 2024 of \$33.7 million \$28.4 million reflects a decrease of \$13.6 million \$3.4 million from \$47.3 million \$31.8 million for the same period in the prior year. A discussion of the changes in product revenues, service agreements revenues, generation revenues and Advanced Technologies contract revenues follows.

Product revenues

Our product revenues and related costs for the three months ended July 31, 2023 January 31, 2024 and 2022 2023 were as follows:

(dollars in thousands)	Three Months Ended July 31,		Change		Three Months Ended January 31,		Change	
	2023	2022	\$	%	2024	2023	\$	%

Product revenues	\$ -	\$ 18,000	\$ (18,000)	N/A	\$ -	\$ 9,095	\$ (9,095)	N/A
Cost of product revenues	2,910	17,919	(15,009)	(84)%	2,391	1,029	1,362	132%
Gross (loss) profit from product revenues	\$ (2,910)	\$ 81	\$ (2,991)	3693%	\$ (2,391)	\$ 8,066	\$ (10,457)	130%
Product revenues gross margin	N/A	0.5%			N/A	88.7%		

There were no product revenues for the three months ended July 31, 2023. Product revenues January 31, 2024 compared to \$9.1 million for the three months ended July 31, 2022 were a result of module sales to Korea Fuel Cell Co., Ltd. ("KFC") under the January 31, 2023. Our December 2021 Settlement Agreement (the "Settlement Agreement") with POSCO Energy Co., Ltd. ("POSCO Energy") and its subsidiary, KFC, for which the Company recognized \$18.0 million on the Ex Works delivery of six modules from the Company's facility in Torrington, CT.

Cost of product revenues decreased \$15.0 million for the three months ended July 31, 2023 to \$2.9 million, compared to \$17.9 million in the same period in the prior year. The decrease is primarily due to the lack of module sales during the three months ended July 31, 2023. Manufacturing variances, primarily related to production volumes and unabsorbed overhead costs, totaled approximately \$2.4 million for the three months ended July 31, 2023, compared to approximately \$3.0 million for the three months ended July 31, 2022. The decrease in manufacturing variances for the three months ended July 31, 2023 was driven primarily by an overall reduction in actual manufacturing costs.

For the three months ended July 31, 2023, we operated at an annualized production rate of approximately 28.9 megawatts ("MW") in our Torrington, CT manufacturing facility, compared to the annualized production rate of 36.5 MW for the three months ended July 31, 2022. The lower annualized production rate for the three months ended July 31, 2023 is primarily a result of reduced staffing in certain production areas during the three months ended July 31, 2023 compared to the three months ended July 31, 2022. The Company continuously evaluates its production rate and staffing levels and has determined that the current levels are sufficient to satisfy the current demand for carbonate fuel cell modules.

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Service agreements revenues

Service agreements revenues and related costs for the three months ended July 31, 2023 and 2022 were as follows:

(dollars in thousands)	Three Months Ended July 31,		Change	
	2023	2022	\$	%
Service agreements revenues	\$ 9,841	\$ 9,049	\$ 792	9%
Cost of service agreements revenues	9,575	7,718	1,857	24%
Gross profit from service agreements revenues	\$ 266	\$ 1,331	\$ (1,065)	80%
Service agreements revenues gross margin	2.7%	14.7%		

Service agreements revenues for the three months ended July 31, 2023 increased \$0.8 million to \$9.8 million from \$9.0 million for the three months ended July 31, 2022. Service agreements revenues increased during the three months ended July 31, 2023, primarily driven by two new module exchanges at the plant owned by Korea Southern Power Company in Korea, which achieved commercial operations in fiscal year 2018, and a module exchange at the plant at Trinity College.

Cost of service agreements revenues increased \$1.9 million to \$9.6 million for the three months ended July 31, 2023 from \$7.7 million for the three months ended July 31, 2022. Cost of service agreements revenues includes maintenance and operating costs and costs of module exchanges. The increase reflects costs of module exchanges for the three months ended July 31, 2023.

Overall gross profit from service agreements revenues was \$0.3 million for the three months ended July 31, 2023, which decreased from a gross profit of \$1.3 million for the three months ended July 31, 2022. The overall gross margin was 2.7% for the three months ended July 31, 2023 compared to a gross margin of 14.7% in the comparable prior year period. Gross margin was lower during the three months ended July 31, 2023 primarily due to the fact that the quarter included a reserve established for obsolete inventory of approximately \$0.8 million.

Generation revenues

Generation revenues and related costs for the three months ended July 31, 2023 and 2022 were as follows:

	Three Months Ended July 31,		Change	
	2023	2022	\$	%
Generation revenues	\$ 10,982	\$ 10,877	\$ 105	1%
Cost of generation revenues	17,483	18,136	(653)	(4)%
Gross loss from generation revenues	\$ (6,501)	\$ (7,259)	\$ 758	10%
Generation revenues gross margin	(59.2)%	(66.7)%		

Revenues from generation for the three months ended July 31, 2023 totaled \$11.0 million, which represents an increase of \$0.1 million from revenue recognized of \$10.9 million for the three months ended July 31, 2022. The increase reflects revenue of \$1.5 million generated by the Groton Project which became operational in December 2022, offset by lower revenue from other plants due to lower output resulting from routine maintenance activities. Generation revenues for the three months ended July 31, 2023 and 2022 reflect revenue from electricity generated under our power purchase agreements ("PPAs") and the sale of renewable energy credits.

Cost of generation revenues totaled \$17.5 million in the three months ended July 31, 2023, compared to \$18.1 million in the three months ended July 31, 2022. Both periods include expensed construction and gas costs of approximately \$6.2 million related to the Toyota project (while expensed construction costs for the comparable prior year period were \$6.9 million) and costs of approximately \$1.3 million related to the increased size of the installed fleet with the Groton Project achieving commercial operations.

As further background on the costs related to the Toyota project, it was determined in the fourth quarter of fiscal year 2021 that a potential source of renewable natural gas ("RNG") at favorable pricing was no longer sufficiently probable for the Toyota project, resulting in impairment of the asset. Thus, as the Toyota project is being constructed, only amounts associated with inventory components that can be redeployed for alternative use are being capitalized. The balance of costs incurred are being expensed as cost of generation revenues. As of July 31, 2023, current market pricing of RNG continues to result in non-recoverability consistent with the Company's prior assessment.

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We currently have three projects in development with fuel sourcing risk, which are the Toyota project, which requires procurement of RNG, and our Derby, CT 14.0 MW and 2.8 MW projects, both of which require natural gas for which there is no pass-through mechanism. Two-year fuel supply contracts have been executed for the Toyota project and the 14.0 MW project in Derby, CT. The Company will look to extend the duration of these contracts should market and credit conditions allow. Fuel sourcing and risk mitigation strategies for the 2.8 MW project in Derby, CT are being assessed and will be implemented as project operational dates become firm. Such strategies may require cash collateral or reserves to secure fuel or related contracts. If the Company is unable to secure fuel on favorable economic terms, it may result in impairment charges to the Derby project assets and further charges for the Toyota project asset.

Cost of generation revenues included depreciation and amortization of approximately \$5.4 million and \$4.1 million for the three months ended July 31, 2023 and 2022, respectively.

We had 43.7 MW of operating power plants in our generation operating portfolio as of July 31, 2023, which increased from 41.4 MW as of July 31, 2022 and which includes 7.4 MW attributed to the design rated output of the Groton Project although the Groton Project has been operating below its rated capacity at an output of approximately 6.0 MW since commencement of commercial operations, offset by the removal of the 3.7 MW Triangle Street Project which is no longer in operation and the 1.4 MW UCI Medical Center Project which has been decommissioned.

Advanced Technologies contract revenues

Advanced Technologies contract revenues and related costs for the three months ended July 31, 2023 and 2022 were as follows:

	Three Months Ended July 31,		Change	
	2023	2022	\$	%
Advanced Technologies contract revenues	\$ 4,687	\$ 5,178	\$ (491)	(9)%
Cost of Advanced Technologies contract revenues	3,757	3,511	246	7%
Gross profit from Advanced Technologies contracts	\$ 930	\$ 1,667	\$ (737)	(44)%
Advanced Technologies contract gross margin	19.8%	32.2%		

Advanced Technologies contract revenues decreased to \$4.7 million for the three months ended July 31, 2023 from \$5.2 million for the three months ended July 31, 2022. Compared to the three months ended July 31, 2022, Advanced Technologies contract revenues recognized under the EMTEC Joint Development Agreement were approximately \$0.3 million higher during the three months ended July 31, 2023 and revenue recognized under government contracts and other contracts were approximately \$0.8 million lower for the three months ended July 31, 2023 as a result of the allocation of engineering resources during the quarter based on the scope of the contracts in the quarter.

Cost of Advanced Technologies contract revenues were \$3.8 million for the three months ended July 31, 2023, compared to \$3.5 million for the same period in the prior year.

Advanced Technologies contracts for the three months ended July 31, 2023 generated a gross profit of \$0.9 million compared to a gross profit of \$1.7 million for the three months ended July 31, 2022. The decrease in gross profit was due primarily to the lower revenues and higher costs recognized under government and other contracts during the three months ended July 31, 2023 compared to the three months ended July 31, 2022.

Administrative and selling expenses

Administrative and selling expenses were \$17.6 million and \$14.2 million for the three months ended July 31, 2023 and 2022, respectively. Administrative and selling expenses were higher during the three months ended July 31, 2023 than during the three months ended July 31, 2022 primarily due to an increase in compensation expense resulting from an increase in headcount in support of sales and business expansion.

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Research and development expenses

Research and development expenses increased to \$15.6 million for the three months ended July 31, 2023 compared to \$9.7 million for the three months ended July 31, 2022. The increase is primarily due to an increase in spending on the Company's ongoing commercial development efforts related to our solid oxide power generation and electrolysis platforms and carbon separation and carbon capture solutions compared to the comparable prior year period.

Loss from operations

Loss from operations for the three months ended July 31, 2023 was \$41.4 million compared to \$28.0 million for the three months ended July 31, 2022. This increase was driven primarily by a \$4.0 million increase in gross loss and a \$9.4 million increase in operating expenses for the three months ended July 31, 2023.

Interest expense

Interest expense for the three months ended July 31, 2023 and 2022 was \$1.9 million and \$1.6 million, respectively. Interest expense for both periods includes interest associated with finance obligations for failed sale-leaseback transactions and interest on the loans associated with the Bridgeport Fuel Cell Project which were terminated in May 2023.

Interest income

Interest income was \$4.0 million and \$0.9 million for the three months ended July 31, 2023 and 2022, respectively. Interest income for the three months ended July 31, 2023 represents \$3.1 million of interest earned on money market investments and \$0.9 million of interest earned on U.S. Treasury Securities. The increase from the comparable prior year period reflects an increase in invested cash balances and higher interest rates than the comparable prior year period.

Gain on extinguishment of finance obligations and debt, net

The gain on extinguishment of finance obligations and debt, net was \$15.3 million for the three months ended July 31, 2023 and represents the gain on the payoff of the PNC finance obligations (which occurred in May 2023) Co., offset by the write-off of debt issuance costs.

Other income, net

Other income, net was \$0.4 million and \$0.2 million for the three months ended July 31, 2023 and 2022, respectively, and primarily represents net foreign currency exchange gains for each of the three month periods ended July 31, 2023 and 2022.

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 income and withholding taxes in Korea. Provision for income tax recorded for the three months ended July 31, 2023 and 2022 was \$0 and \$0.5 million Ltd. ("KFC"), respectively.

Series B preferred stock dividends

Dividends recorded on our 5% Series B Cumulative Convertible Preferred Stock ("Series B Preferred Stock") were \$0.8 million for each of the three month periods ended July 31, 2023 and 2022.

Net income attributable to noncontrolling interests

Net income attributable to noncontrolling interests is the result of allocating profits and losses to noncontrolling interests under the hypothetical liquidation at book value ("HLBV") method. HLBV is a balance sheet-oriented approach for applying the equity method of accounting when there is a complex structure, such as the flip structure of our tax equity financings with East West Bancorp, Inc. ("East West Bank") and Renewable Energy Investors, LLC ("REI").

For the three months ended July 31, 2023 and 2022, net income attributable to noncontrolling interest totaled \$0.6 million and \$0.4 million, respectively, for the LIPA Yaphank project tax equity financing transaction with REI.

For the three months ended July 31, 2023, net loss attributable to noncontrolling interest totaled \$0.1 million for the Groton Project tax equity financing transaction with East West Bank. There was no comparable net loss for the three months ended

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July 31, 2022, as the Groton Project tax equity transaction closed and the Groton Project began operations in the first quarter of fiscal year 2023.

Net loss attributable to common stockholders and loss per common share

Net loss attributable to common stockholders represents the net loss for the period less the preferred stock dividends on the Series B Preferred Stock. For the three month periods ended July 31, 2023 and 2022, net loss attributable to common stockholders was \$25.1 million and \$30.2 million, respectively, and loss per common share was \$0.06 and \$0.08, respectively. The decrease in the net loss attributable to common stockholders for the three months ended July 31, 2023 is primarily due to the gain on extinguishment of finance obligations and debt, net, partially offset by higher operating expenses and a higher gross loss during the three months ended July 31, 2023. The decrease in loss per common share is a result of the decrease in the net loss attributable to common stockholders and an increase in weighted average share outstanding for the three months ended July 31, 2023 compared to the three months ended July 31, 2022.

Comparison of Nine Months Ended July 31, 2023 and 2022

Revenues and Costs of revenues

Our revenues and cost of revenues for the nine months ended July 31, 2023 and 2022 were as follows:

(dollars in thousands)	Nine Months Ended July 31,		Change	
	2023	2022	\$	%
Total revenues	\$ 100,932	\$ 91,283	\$ 9,649	11%
Total costs of revenues	110,003	105,668	4,335	4%
Gross loss	<u>\$ (9,071)</u>	<u>\$ (14,385)</u>	<u>\$ 5,314</u>	<u>(37)%</u>
Gross margin	(9.0)%	(15.8)%		

Total revenues for the nine months ended July 31, 2023 of \$100.9 million reflects an increase of \$9.6 million from \$91.3 million for the same period in the prior year. Cost of revenues for the nine months ended July 31, 2023 of \$110.0 million reflects an increase of \$4.3 million from \$105.7 million for the same period in the prior year. A discussion of the changes in product revenues, service agreements revenues, generation revenues and Advanced Technologies contract revenues follows.

Product revenues

Our product revenues and related costs for the nine months ended July 31, 2023 and 2022 were as follows:

(dollars in thousands)	Nine Months Ended July 31,		Change	
	2023	2022	\$	%
Product revenues	\$ 9,095	\$ 36,000	\$ (26,905)	(75)%
Cost of product revenues	7,425	39,159	(31,734)	(81)%
Gross profit (loss) from product revenues	<u>\$ 1,670</u>	<u>\$ (3,159)</u>	<u>\$ 4,829</u>	<u>(153)%</u>
Product revenues gross margin	18.4%	(8.8)%		

Product revenues for the nine months ended July 31, 2023 were \$9.1 million compared to \$36.0 million for the nine months ended July 31, 2022. The Settlement Agreement with POSCO Energy and its subsidiary, KFC, included an option to purchase an additional 14 modules (in addition to the 20 modules that were purchased by KFC during fiscal year 2022). This option included a material right related to an extended warranty obligation for the modules. The option was not exercised by KFC as of the expiration date of December 31, 2022 and, as a result, during the nine months ended July 31, 2023, the Company recognized \$9.1 million of product revenues for the three months ended January 31, 2023, which represents the consideration allocated to the material right if the option had been exercised. Product revenues for the nine months ended July 31, 2022 were a result of module sales to KFC under the Settlement Agreement for which the Company recognized \$36.0 million on the Ex Works delivery of twelve modules from the Company's facility in Torrington, CT.

Cost of product revenues decreased \$31.7 million increased \$1.4 million for the nine three months ended July 31, 2023 January 31, 2024 to \$7.4 million \$2.4 million, compared to \$39.2 million \$1.0 million in the same period in the prior year. The decrease is primarily due to the lack of module sales during the nine months ended July 31, 2023. Manufacturing variances, primarily related to production volumes and unabsorbed overhead costs, totaled approximately \$6.8 million \$2.2 million for the nine three months ended July 31, 2023 January 31, 2024, compared to approximately \$8.7 million \$1.1 million for the nine three months ended July 31, 2022 January 31, 2023. The reduction

For the three months ended January 31, 2024, we operated at an annualized production rate of approximately 33.2 megawatts ("MW") in our Torrington, CT manufacturing facility, compared to an annualized production rate of 38.2 MW for the nine three months ended January 31, 2023.

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July 31, 2023 was driven primarily by an overall reduction in actual manufacturing costs. Cost of product revenues for the nine months ended July 31, 2022 included an impairment charge of approximately \$1.0 million related to the cessation of use of conditioning equipment in Danbury, CT, which has been replaced by new equipment at our production facility in Torrington, CT.

Product revenues for the nine months ended July 31, 2023 generated a gross profit of \$1.7 million compared to a gross loss of \$3.2 million for the nine months ended July 31, 2022. The gross profit is a direct result of the product revenues recognized in the nine months ended July 31, 2023 related to the expiration without exercise of KFC's module purchase option, particularly as there were no corresponding costs associated with the recognition of these revenues.

For the nine months ended July 31, 2023, we operated at an annualized production rate of approximately 31.9 MW, compared to the annualized production rate of 38.5 MW for the nine months ended July 31, 2022. The lower annualized production rate for the nine months ended July 31, 2023 is primarily a result of reduced staffing levels during the nine months ended July 31, 2023. The Company continuously evaluates its production rate and staffing levels and has determined that the current levels are sufficient to satisfy the current demand for carbonate fuel cell modules.

Service agreements revenues

Service agreements revenues and related costs for the **nine** three months ended **July 31, 2023** January 31, 2024 and **2022** 2023 were as follows:

(dollars in thousands)	Nine Months Ended				Three Months Ended January 31,			
	July 31,		Change		2024		2023	
	2023	2022	\$	%			\$	%
Service agreements revenues	\$49,913	\$13,855	\$36,058	260%	\$ 1,617	\$ 13,882	\$(12,265)	(88)%
Cost of service agreements revenues	40,633	13,123	27,510	210%	1,888	10,945	(9,057)	(83)%
Gross profit from service agreements revenues	\$ 9,280	\$ 732	\$ 8,548	1168%				
Gross (loss) profit from service agreements revenues					\$ (271)	\$ 2,937	\$ (3,208)	109%
Service agreements revenues gross margin	18.6%	5.3%			(16.8)%	21.2%		

Service agreements revenues for the **nine** three months ended **July 31, 2023** increased \$36.0 million January 31, 2024 decreased \$12.3 million to **\$49.9 million** \$1.6 million from \$13.9 million for the **nine** three months ended **July 31, 2022** January 31, 2023. The decrease in service agreements revenues recognized during the **nine** three months ended **July 31, 2023** were January 31, 2024 was primarily driven by one new the fact that there were no module exchange at exchanges during the plant at Trinity College, two new quarter. During the three months ended January 31, 2023, there were module exchanges at the plant in Woodbridge, CT, which originally achieved commercial operations in fiscal year 2017, and 12 new module exchanges at the plants owned by Korea Southern Power Company in Korea, which achieved commercial operations in fiscal year 2018. The increase in revenues for the nine months ended July 31, 2023 is primarily due to the fact that 15 new module exchanges occurred during the period, while there were fewer module exchanges during the nine months ended July 31, 2022.

Cost of service agreements revenues increased \$27.5 million decreased \$9.1 million to \$40.6 million \$1.9 million for the **nine** three months ended **July 31, 2023** January 31, 2024 from \$13.1 million \$10.9 million for the **nine** three months ended **July 31, 2022** January 31, 2023. Cost of service agreements revenues includes maintenance and operating costs and costs of module exchanges. The increase is primarily due to the fact that 15 new module exchanges occurred during the nine months ended July 31, 2023, while decrease reflects lower costs as there were fewer no module exchanges during the **nine** three months ended **July 31, 2022** January 31, 2024.

Overall gross profit loss from service agreements revenues was \$9.3 million \$0.3 million for the **nine** three months ended **July 31, 2023** January 31, 2024, which increased decreased from a gross profit of \$0.7 million \$2.9 million for the **nine** three months ended **July 31, 2022** January 31, 2023. The overall gross margin was 18.6%(16.8)% for the **nine** three months ended **July 31, 2023** January 31, 2024 compared to a gross margin of 5.3%21.2% in the comparable prior year period. Gross margin was higher lower during the **nine** three months ended **July 31, 2023** January 31, 2024 primarily due to the fact that 15 new module exchanges were completed during the nine months ended July 31, 2023 (compared to fewer lack of module exchanges during the nine months ended July 31, 2022) quarter and the fact that such the comparable prior year quarter included module exchanges that were performed pursuant to service agreements with higher margins.

The Company completed a multi-year fleet upgrade in fiscal year 2023 and is now entering a lighter module replacement cycle based on the deployment of longer life modules during the fleet upgrade. As a result, we expect lower service agreements revenues in fiscal year 2024 compared to fiscal year 2023. The Company currently does not expect any module exchanges to occur until the fourth quarter of fiscal year 2024.

Generation revenues

Generation revenues and related costs for the three months ended January 31, 2024 and 2023 were as follows:

	Three Months Ended January 31,		Change	
	2024	2023	\$	%
Generation revenues	\$ 10,493	\$ 9,557	\$ 936	10%
Cost of generation revenues	20,894	16,602	4,292	26%
Gross loss from generation revenues	\$ (10,401)	\$ (7,045)	\$ (3,356)	(48)%
Generation revenues gross margin	(99.1)%	(73.7)%		

Revenues from generation for the three months ended January 31, 2024 totaled \$10.5 million, which represents an increase of \$0.9 million from revenue recognized of \$9.6 million for the three months ended January 31, 2023. The increase reflects revenue of \$0.5 million generated by the Toyota Project, which became operational during the three months ended January 31, 2024, and revenue of \$2.1 million generated by the 14.0 MW Derby Fuel Cell Project and the 2.8 MW SCEF Fuel Cell Project, both located in Derby, Connecticut (collectively, the "Derby Projects"), both of which became operational in December 2023, offset by lower revenue from other plants due to lower output resulting from routine maintenance activities. Generation revenues for the three months ended January 31, 2024 and 2023 reflect revenue from electricity generated under our power purchase agreements ("PPAs") and the sale of renewable energy credits.

Cost of generation revenues totaled \$20.9 million in the three months ended January 31, 2024, compared to \$16.6 million in the three months ended January 31, 2023. The overall increase in cost of generation revenues is related to the increased

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Generation revenues

Generation revenues and related costs for the nine months ended July 31, 2023 and 2022 were as follows:

	Nine Months Ended July 31,		Change	
	2023	2022	\$	%
(dollars in thousands)				
Generation revenues	\$ 28,979	\$ 27,423	\$ 1,556	6%
Cost of generation revenues	51,166	42,978	8,188	19%
Gross loss from generation revenues	\$ (22,187)	\$ (15,555)	\$ (6,632)	43%
Generation revenues gross margin	(76.6)%	(56.7)%		

Revenues from generation for the nine months ended July 31, 2023 totaled \$29.0 million, which represents an increase of \$1.6 million from revenue recognized of \$27.4 million for the nine months ended July 31, 2022. Generation revenues for the nine months ended July 31, 2023 and 2022 reflect revenue from electricity generated under our PPAs and the sale of renewable energy credits. The increase in generation revenues in the nine months ended July 31, 2023 is primarily due to the fact that we recorded a full nine-months of generation revenues associated with the Long Island Power Authority ("LIPA") project in Yaphank, New York (which achieved commercial operations in December 2021) and the fact that the Groton Project achieved commercial operations and began generating revenues in the first quarter of fiscal year 2023.

Cost of generation revenues totaled \$51.2 million in the nine months ended July 31, 2023. The increase from the comparable prior year period was primarily due to expensed construction and gas costs of approximately \$17.8 million related to the Toyota project (while expensed construction costs for the comparable prior year period were \$14.0 million) and costs of approximately \$5.7 million related to the increased size of the installed fleet with the Groton Toyota Project and Derby Projects achieving commercial operations offset by lower operating costs for existing plants due to efficiencies resulting from plant in the three months ended January 31, 2024 as well as maintenance activities performed at the Tulare and module exchanges. Cost of generation revenues also includes an impairment charge of \$2.4 million for Groton projects during the nine months ended July 31, 2023 relating January 31, 2024. Both periods include expensed construction and gas costs related to the Toyota Project, which were \$3.5 million in three months ended January 31, 2024, compared to \$7.6 million in the three months ended

January 31, 2023. During the three months ended January 31, 2024, the Company incurred a mark-to-market loss of \$1.9 million related to a project asset for natural gas purchase contract. There was no comparable loss in the prior year as the Company changed its designation from normal purchase normal sale in the fourth quarter of fiscal year 2023 as a result of net settling certain natural gas purchases under a previous normal purchase normal sale contract designation, which resulted in a PPA was ultimately not awarded.

change to mark-to-market accounting. Cost of generation revenues included depreciation and amortization of approximately \$14.9 million \$6.8 million and \$11.8 million \$4.2 million for the nine three months ended July 31, 2023 January 31, 2024 and 2022, respectively 2023, respectively.

We currently have four projects with fuel sourcing risk, which are the Toyota Project, which requires procurement of renewable natural gas ("RNG"), and our 14.0 MW and 2.8 MW Derby Projects, and our 7.4 MW project in Yaphank Long Island (the "Yaphank Project"), which require natural gas for which there is no pass-through mechanism. A two-year (through May of 2025) fuel supply contract has been executed for the Toyota Project. Six-year (through October 2029) fuel supply contracts have been executed for the 14.0 MW and 2.8 MW Derby Projects. We are currently in the midst of a seven-year contract (through September 2028) for our 7.4 MW Yaphank Project. The increase Company will look to extend the duration of these contracts should market and credit conditions allow. If the Company is unable to secure fuel on favorable economic terms, it may result in gross loss from generation revenues is primarily related impairment charges to the \$17.8 million of costs being expensed related to Derby Project asset or the Yaphank Project asset and further charges for the Toyota project, partially offset by higher margins Project asset.

We had 62.8 MW of operating power plants in our generation operating portfolio as of January 31, 2024, which increased from 43.7 MW as of January 31, 2023 and which includes the operating fleet (due Derby Projects and the Toyota Project, all of which became operational in part to the higher operating output of the generation fleet portfolio) compared to the nine months ended July 31, 2022 December 2023.

Advanced Technologies contract revenues

Advanced Technologies contract revenues and related costs for the nine three months ended July 31, 2023 January 31, 2024 and 2022 2023 were as follows:

(dollars in thousands)	Nine Months Ended July				Three Months Ended January 31,			
	31,		Change		2024		2023	
	2023	2022	\$	%	2024	2023	\$	%
Advanced Technologies contract revenues	\$ 12,945	\$ 14,005	\$ (1,060)	(8)%	\$ 4,581	\$ 4,539	\$ 42	1%
Cost of Advanced Technologies contract revenues	10,779	10,408	371	4%	3,243	3,260	(17)	(1)%
Gross profit from Advanced Technologies contracts	\$ 2,166	\$ 3,597	\$ (1,431)	(40)%	\$ 1,338	\$ 1,279	\$ 59	5%
Advanced Technologies contract gross margin	16.7%	25.7%			29.2%	28.2%		

Advanced Technologies contract revenues decreased increased slightly to \$12.9 million \$4.6 million for the nine three months ended July 31, 2023 January 31, 2024 from \$14.0 million \$4.5 million for the nine three months ended July 31, 2022 January 31, 2023. Compared to the nine three months ended July 31, 2022 January 31, 2023, Advanced Technologies contract revenues recognized under the EMTEC our Joint Development Agreement with ExxonMobil Technology and Engineering Company (formerly known as ExxonMobil Research and Engineering Company) ("EMTEC") were approximately \$0.7 million \$0.1 million higher during the nine three months ended July 31, 2023 January 31, 2024 and revenue recognized under government contracts and other contracts were approximately \$1.8 million \$0.1 million lower for the nine three months ended July 31, 2023 as a result January 31, 2024. Advanced Technologies contract revenues for the first quarter of fiscal year 2024 also include revenues arising from the allocation purchase order received from Esso Nederland B.V. ("Esso"), an affiliate of engineering resources during the period based on the scope of the contracts in the period. EMTEC and Exxon Mobil Corporation.

Cost of Advanced Technologies contract revenues were \$10.8 million \$3.2 million for the nine three months ended July 31, 2023 January 31, 2024, compared to \$10.4 million \$3.3 million for the same period in the prior year.

Advanced Technologies contracts for the nine three months ended July 31, 2023 January 31, 2024 and 2023 generated a gross profit of \$2.2 million compared to a gross profit of \$3.6 million for the nine months ended July 31, 2022 \$1.3 million. The lower slight increase in gross profit was due primarily to the higher revenues and lower costs recognized under government and other contracts during the three months ended January 31, 2024 compared to the three months ended January 31, 2023.

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due to the higher costs recognized under government contracts during the nine months ended July 31, 2023, offset by favorable margins under the EMTEC Joint Development Agreement during the nine months ended July 31, 2023 compared to the nine months ended July 31, 2022.

Administrative and selling expenses

Administrative and selling expenses were ~~\$47.6 million~~ \$16.4 million and ~~\$64.4 million~~ \$15.0 million for the ~~nine~~three months ended ~~July 31, 2023~~ January 31, 2024 and ~~2022~~2023, respectively. The nine months ended July 31, 2022 included non-recurring legal expenses of \$24.0 million associated with the settlement of the Company's disputes with POSCO Energy and KFC. Excluding the \$24.0 million in legal fees, administrative and selling expenses were higher during the ~~nine~~three months ended ~~July 31, 2023~~ January 31, 2024 than during the ~~nine~~three months ended ~~July 31, 2022~~ January 31, 2023 primarily due to an increase in compensation expense resulting from an increase in headcount in support of sales, marketing and business expansion.

Research and development expenses

Research and development expenses increased to ~~\$43.0 million~~ \$14.4 million for the ~~nine~~three months ended ~~July 31, 2023~~ January 31, 2024 compared to ~~\$22.3 million~~ \$12.7 million for the ~~nine~~three months ended ~~July 31, 2022~~ January 31, 2023. The increase is primarily due to an increase in spending, including spending for labor and materials, on the Company's ongoing commercial development efforts related to our solid oxide power generation and electrolysis platforms and carbon separation and carbon capture/recovery solutions compared to the comparable prior year period.

Loss from operations

Loss from operations for the ~~nine~~three months ended ~~July 31, 2023~~ January 31, 2024 was ~~\$99.7 million~~ \$42.5 million compared to ~~\$101.1 million~~ \$22.5 million for the ~~nine~~three months ended ~~July 31, 2022~~ January 31, 2023. This ~~decrease~~increase was driven primarily by ~~decreased~~administrative a \$17.0 million increase in gross loss and ~~selling~~a \$3.1 million increase in operating expenses ~~compared to~~ for the ~~nine~~three months ended ~~July 31, 2022~~, offset by higher research and development expenses compared to the nine months ended July 31, 2022 January 31, 2024. The decrease in loss from operations was also due, in part, to a lower gross loss of \$9.1 million in the nine months ended July 31, 2023, compared to gross loss of \$14.4 million in the nine months ended July 31, 2022. The lower gross loss was driven by higher service agreements gross margin, partially offset by an increase of \$3.8 million in non-capitalizable costs related to construction of the Toyota project, and an increase in generation gross loss as a result of the project asset impairment charge of \$2.4 million (excluding the impact of non-capitalizable costs related to construction of the Toyota project).

Interest expense

Interest expense for the ~~nine~~three months ended ~~July 31, 2023~~ January 31, 2024 and ~~2022~~2023 was ~~\$4.9 million~~ \$2.3 million and ~~\$4.8 million~~ \$1.5 million, respectively. Interest expense for both periods the three months ended January 31, 2024 includes interest on the OpCo Financing Facility (as defined elsewhere herein), which was entered into in May 2023, interest on the Senior Back Leverage Loan Facility and the Subordinated Back Leverage Loan Facility (in each case as defined elsewhere herein), which were entered into in August 2023, and interest on the Crestmark sale-leaseback transactions. Interest expense for the three months ended January 31, 2023 includes interest associated with finance obligations for failed sale-leaseback transactions and interest on the loans associated with the Bridgeport Fuel Cell Project, which were terminated in May 2023.

Interest income

Interest income was ~~\$11.1 million~~ \$4.1 million and ~~\$1.0 million~~ \$3.4 million for the ~~nine~~three months ended ~~July 31, 2023~~ January 31, 2024 and ~~2022~~2023, respectively. Interest income for the ~~nine~~three months ended ~~July 31, 2023~~ January 31, 2024 represents \$8.7 million of interest earned on money market investments and \$2.4 million of interest earned on U.S. Treasury Securities.

Gain on extinguishment of finance obligations and debt, net

The gain on extinguishment of finance obligations and debt, net was \$15.3 million for the nine months ended July 31, 2023 and represents the gain on the payoff of the PNC finance obligations (which occurred in May 2023), offset by the write-off of debt issuance costs.

Other (expense) income, net

Other (expense) income, net was \$0.2 million (\$3.7) million and \$0.1 million \$49.0 thousand for the **nine** **three** months ended **July 31, 2023** **January 31, 2024** and **2022**, respectively, and primarily represents net foreign currency exchange gains 2023, respectively. Expense for each the three months ended January 31, 2024 relates to a loss on the OpCo Financing Facility interest rate swap derivative of \$3.5 million as a result of a decrease of approximately 100 basis points in the **nine** month periods ended **July 31, 2023** and **2022**. Secured Overnight Financing Rate ("SOFR").

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 income and withholding taxes in Korea. Provision for income tax recorded for the **nine** **three** months ended

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July 31, 2024 and 2023 was \$0 and **2022** was \$0.6 million and \$0.5 million, respectively. The provision for income tax recorded for the **nine** months ended **July 31, 2023** reflects the realization of withholding taxes on customer deposits.

Series B preferred stock dividends

Dividends recorded on our 5% Series B Cumulative Convertible Perpetual Preferred Stock ("Series B Preferred Stock") were \$2.4 million \$0.8 million for each of the **nine** **three** month periods ended **July 31, 2023** **January 31, 2024** and **2022**.

Net loss income attributable to noncontrolling interests

Net **loss** **income** attributable to noncontrolling interests is the result of allocating profits and losses to noncontrolling interests under the hypothetical liquidation at book value ("HLBV") method. HLBV is a balance sheet-oriented approach for

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applying the equity method of accounting when there is a complex structure, such as the flip structure of our tax equity financings with East West **Bank** Bancorp, Inc. ("East West Bank"), Renewable Energy Investors, LLC ("REI"), and **REI**, Franklin Park 2023 FCE Tax Equity Fund, LLC ("Franklin Park").

For the **nine** **three** months ended **July 31, 2023** **January 31, 2024** and **2023**, net loss attributable to noncontrolling interest totaled \$3.6 million and \$2.9 million, respectively, for the Groton Project tax equity financing transaction with East West Bank.

For the three months ended January 31, 2024 and 2023, net (loss) income attributable to noncontrolling interest totaled \$1.4 million (\$0.3) million and \$0.4 million, respectively, for the LIPA Yaphank **project** **Project** tax equity financing transaction with REI.

For the **nine** **three** months ended **July 31, 2022** **January 31, 2024**, net loss **allocated** **attributable** to noncontrolling interest totaled \$5.0 million \$20.7 million for the **LIPA** **Yaphank** **Derby** **Projects** tax equity financing transaction with **REI**, **Franklin Park**. The **net** **loss** **for** **the** **nine** **months** **ended** **July 31, 2022** **was** **is** primarily driven by the Investment Tax Credit ("ITC") attributable to the noncontrolling interest for the

2021 2023 tax year. The ITC reduces the noncontrolling interests' interest's claim on hypothetical liquidation proceeds in the HLBV waterfall and is nonrecurring. This reduction in liquidation proceeds drove the loss in the nine three months ended July 31, 2022 January 31, 2024.

For the nine months ended July 31, 2023, net loss attributable to noncontrolling interests totaled \$2.8 million for the Groton Project tax equity financing transaction with East West Bank. There was no comparable net loss for the nine three months ended July 31, 2022 January 31, 2023, as the Groton Project tax equity transaction closed and the Groton Project Derby Projects began operations in the first quarter of fiscal year 2023. The net loss for the nine months ended July 31, 2023 is primarily driven by the ITC attributable to the noncontrolling interest for the 2022 tax year. The ITC reduces the noncontrolling interests' claim on hypothetical liquidation proceeds in the HLBV waterfall. This reduction in liquidation proceeds drove the loss in the nine months ended July 31, 2023, 2024.

Net loss attributable to common stockholders and net loss per common share

Net loss attributable to common stockholders represents the net loss for the period less the preferred stock dividends on the Series B Preferred Stock. For the nine month three-month periods ended July 31, 2023 January 31, 2024 and 2022 2023, net loss attributable to common stockholders was \$79.6 million \$20.6 million and \$102.7 million \$19.4 million, respectively, and net loss per common share was \$0.19 and \$0.27, respectively. \$0.05 in both periods.

The decrease increase in the net loss attributable to common stockholders for the nine three months ended July 31, 2023 January 31, 2024 is primarily due to the lower higher operating expenses and a higher gross loss for during the nine three months ended July 31, 2023 January 31, 2024 which was partially offset by net loss attributable to noncontrolling interests totaling \$24.6 million in the period, primarily due to the tax equity financing transaction related to the Derby Projects, compared to \$2.5 million in the nine three months ended July 31, 2022 January 31, 2023.

The lower net loss per common share for the nine three months ended July 31, 2023 as compared to the nine months ended July 31, 2022 is primarily due to the lower net loss attributable to common stockholders and January 31, 2024 benefited from the higher number of weighted average shares outstanding due to share issuances since July 31, 2022 January 31, 2023. The net loss per common share for the three months ended January 31, 2024 also benefited from the net loss attributable to noncontrolling interests due to the tax equity financing transaction related to the Derby Projects of approximately \$0.05 per share compared approximately \$0.01 per share in the three months ended January 31, 2023.

LIQUIDITY AND CAPITAL RESOURCES

Overview, Cash Position, Sources and Uses

Our principal sources of cash have been proceeds from the sale of our products and projects, electricity generation revenues, research and development and service agreements with third parties, sales of our common stock through public equity offerings, and proceeds from debt, project financing and tax monetization transactions. We have utilized this cash to accelerate the commercialization of our solid oxide platforms, develop new capabilities to separate and capture carbon, develop and construct project assets, invest in capital improvements and expansion of our operations, perform research and development, pay down existing outstanding indebtedness, and meet our other cash and liquidity needs.

As of July 31, 2023 January 31, 2024, unrestricted cash and cash equivalents totaled \$303.7 million \$297.5 million compared to \$458.1 million \$250.0 million as of October 31, 2022 October 31, 2023. During the nine year ended October 31, 2023 and the three months ended July 31, 2023 January 31, 2024, the Company invested in United States (U.S.) Treasury Securities, all of which had matured as of

January 31, 2024. The amortized cost of the U.S. Treasury Securities outstanding totaled \$77.4 million as of July 31, 2023 (compared to \$0 as of October 31, 2022) January 31, 2024 compared to \$103.8 as of October 31, 2023 and is classified as Investments — short-term on the Consolidated Balance Sheets.

The maturity dates for the outstanding U.S. Treasury Securities range from August 8, 2023 to October 26, 2023. On July 12, 2022, the Company entered into an agreement with Jefferies LLC, B. Riley Securities, Inc. (as defined in Note 11. "Stockholders' Equity"). During the quarter ended January 31, 2024, Barclays Capital Inc., BMO Capital Markets Corp., BofA Securities, Inc., Canaccord Genuity LLC, Citigroup Global Markets Inc., J.P. Morgan Securities LLC and Loop Capital Markets LLC (the "Open Market Sale Agreement") with respect to an at the market offering program no sales were made under which the Company may, from time to time, offer and sell up to 95.0 million shares of the Company's common stock. From the date of the Open Market Sale Agreement through July 31, 2023, the Company sold approximately 60.8 million shares. In order to sell additional shares under the Open Market Sale Agreement, at an average sale price of \$2.67 per share. Of this 60.8 million shares, approximately 57.4 million shares were issued and settled on or prior to July 31, 2023 resulting in gross proceeds of approximately \$155.0 million before deducting sales commissions and fees and net proceeds of approximately \$151.2 million after deducting sales commissions and fees totaling approximately \$3.8 million. During the nine months ended July 31, 2023, approximately 42.3 million shares were sold under the Open Market Sale Agreement at an average sale price of \$2.26 per share. Of this 42.3 million shares, approximately 38.9 million shares were issued and settled during the nine month period ended July 31, 2023 resulting in gross proceeds of approximately \$88.0 million before deducting sales commissions and fees and net proceeds of approximately \$85.9 million after deducting sales commissions and fees totaling approximately \$2.1 million. During the three months ended July 31, 2023, approximately 41.3 million shares were sold under the Open Market Sale Agreement at an average sale price of \$2.24 per share. Of this 41.3 million shares, approximately 37.9 million shares were issued and settled during the three month period ended July 31, 2023, resulting in gross proceeds of approximately \$85.1 million before deducting sales commissions and fees, and net proceeds of approximately \$83.3 million after deducting sales commissions and fees totaling approximately \$1.8 million. The balance of approximately 3.4 million shares was settled subsequent to July 31, 2023, resulting in gross proceeds of approximately \$7.4 million before deducting sales commissions and fees, and net proceeds of approximately \$7.3 million after deducting sales commissions and fees totaling approximately \$0.1 million. Subsequent to the end of the quarter, the Company sold approximately 2.0 million shares of its common stock under the Open Market Sale Agreement at an average price of \$2.14 per share, resulting in gross proceeds of approximately \$4.3 million before deducting sales commissions and fees, and net proceeds of approximately \$4.2 million after deducting sales commissions and fees totaling approximately \$0.1 million.

As of the date of this report, approximately 32.2 million shares are available for issuance under the Open Market Sale Agreement. The Company currently intends to use the net proceeds from this offering to accelerate the development and commercialization of its product platforms (including, but not limited to, its solid oxide and carbon capture platforms), for project development, market development, and internal research and development, to invest in capacity expansion for solid oxide and carbonate fuel cell manufacturing, and for project financing, working capital support, and general corporate purposes. The Company may also use the net proceeds from this offering to invest in joint ventures, acquisitions, and strategic growth investments and to acquire, license or invest in products, technologies or businesses that complement its business.

During the third quarter of fiscal year 2023, the Company entered into a project financing facility (which is referred to as the "OpCo Financing Facility") in the amount of \$80.5 million, which was partially used to extinguish certain existing debt, to partially repay other existing debt, and to repurchase project assets under sale-leaseback transactions, resulting in \$46.1 million of net proceeds. See Note 15. "Debt" for additional information regarding the OpCo Financing Facility.

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supplement covering such sales under its Registration Statement on Form S-3, which was filed in October 2023. See Note 11. "Stockholders' Equity" for additional information regarding the Open Market Sale Agreement.

During the fourth quarter of fiscal year 2023, the Company closed on a tax equity financing transaction with Franklin Park 2023 FCE Tax Equity Fund, LLC ("Franklin Park"), a subsidiary of Franklin Park Infrastructure, LLC, for two fuel cell power plant installations -- the 14.0 MW Derby Fuel Cell Project and the 2.8 MW SCEF Fuel Cell Project, both located in Derby, Connecticut (collectively, the "Derby Projects"). Franklin Park's tax equity commitment with respect to the Derby Projects totals \$30.2 million. Of this amount, approximately \$9.1 million was received on October 31, 2023 and the remaining approximately \$21.1 million was received during the three months ended January 31, 2024. In connection with the initial closing of this tax equity financing transaction in fiscal year 2023, the Company paid closing costs of approximately \$1.8 million, which included appraisal fees, title insurance expenses and legal and consulting fees.

During the three months ended January 31, 2024, the Company completed the Technical Improvement Plan to bring the Groton Project (defined elsewhere herein) to its rated capacity and the Groton Project reached its design rated output of 7.4 MW. The Company achieved all conditions precedent required for the first annual funding from East West Bank and, as a result, the Company received a \$4.0 million contribution during the three months ended January 31, 2024 which is recorded as noncontrolling interest on the Consolidated Balance Sheets.

We believe that our unrestricted cash and cash equivalents, expected receipts from our contracted backlog funds received upon the maturity of U.S. Treasury Securities, and release of short-term restricted cash less expected disbursements over the next twelve months will be sufficient to allow the Company to meet its obligations for at least one year from the date of issuance of the financial statements included in this Quarterly Report on Form 10-Q.

To date, we have not achieved profitable operations or sustained positive cash flow from operations. The Company's future liquidity, for the remainder of fiscal year 2023/2024 and in the long-term, will depend on its ability to (i) timely complete current projects in process within budget, (ii) increase cash flows from its generation operating portfolio, including by meeting conditions required to timely commence operation of new projects, operating its generation operating portfolio in compliance with minimum performance guarantees and operating its generation operating portfolio in accordance with revenue expectations, (iii) obtain financing for project construction and manufacturing expansion, (iv) obtain permanent financing for its projects once constructed, (v) increase order and contract volumes, which would lead to additional product sales, service agreements and generation revenues, (vi) obtain funding for and receive payment for research and development under current and future Advanced Technologies contracts, (vii) successfully commercialize its solid oxide, hydrogen and carbon capture platforms, (viii) implement capacity expansion for solid oxide product manufacturing, (ix) implement the product cost reductions necessary to achieve profitable operations, (x) manage working capital and the Company's unrestricted cash balance and (xi) access the capital markets to raise funds through the sale of debt and equity securities, convertible notes, and other equity-linked instruments.

We are continually assessing different means by which to accelerate the Company's growth, enter new markets, commercialize new products, and enable capacity expansion. Therefore, from time to time, the Company may consider and enter into agreements for one or more of the following: negotiated financial transactions, minority investments, collaborative ventures, technology sharing, transfer or other technology license arrangements, joint ventures, partnerships, acquisitions or other business transactions for the purpose(s) of geographic or manufacturing expansion and/or new product or technology development and commercialization, including hydrogen production through our carbonate and solid oxide platforms and storage and carbon capture, sequestration and utilization technologies.

Our business model requires substantial outside financing arrangements and satisfaction of the conditions of such arrangements to construct and deploy our projects to facilitate the growth of our business. The Company has invested capital raised from sales of its common stock to build out its project portfolio. The Company has also utilized and expects to continue to utilize a combination of long-term debt and tax equity financing (e.g., sale-leaseback transactions, partnership flip transactions and the monetization and/or transfer of eligible investment and production tax credits) to finance its project asset portfolio as these projects commence commercial operations, particularly in light of the passage of the Inflation Reduction Act in August 2022. The Company may also seek to undertake private placements of debt securities of a portfolio of assets to finance its project asset portfolio. The proceeds of any such financing, if obtained, may allow the Company to reinvest capital back into the business and to fund other projects. We may also seek to obtain additional financing in both the debt and equity markets in the future. If financing is not available to us on acceptable terms if and when needed, or on terms acceptable to us or our lenders, if we do not satisfy the conditions of our financing arrangements, if we spend more than the financing approved for projects, if project costs exceed an amount that the Company can finance, or if we

do not generate sufficient revenues or obtain capital sufficient for our corporate needs, we may be required to reduce or slow planned spending, reduce staffing, sell assets, seek alternative financing and take other measures, any of which could have a material adverse effect on our financial condition and operations.

Generation Operating Portfolio, Project Assets, and Backlog

To grow our generation operating portfolio, the Company **will** expects to continue to invest in developing and building turn-key fuel cell projects, which will be owned by the Company and classified as project assets on the Consolidated Balance Sheets. This strategy requires liquidity and the Company expects to continue to have increasing liquidity requirements as project sizes increase and more projects are added to backlog. We may commence building project assets upon the award of a project or execution of a multi-year PPA with an end-user that has a strong credit profile. Project development and construction cycles, which span the time between securing a PPA and commercial operation of the platform, vary substantially and can take years. As a result of these project cycles and strategic decisions to finance the construction of certain projects, we may need to make significant up-front investments of resources in advance of the receipt of any cash from the sale or long-term financing of such projects. To make these up-front investments, we may use our working capital, seek to raise funds through the sale of equity or debt securities, or seek other financing arrangements. Delays in construction progress and completing current projects in process within budget, or in completing financing or the sale of our projects may impact our liquidity in a material way.

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Our We believe our generation operating portfolio (43.7 MW as of July 31, 2023, which includes 7.4 MW attributed generally contributes to the design rated output of the Groton Project although the Groton Project has been operating below its rated capacity at an output of approximately 6.0 MW since commencement of commercial operations) contributes higher long-term cash flows to the Company than if these projects had been sold. Our generation operating portfolio totaled 62.8 MW as of January 31, 2024. We expect generation revenue to continue to grow as additional projects achieve commercial operation, but this revenue amount may also fluctuate from year to year depending on platform output, operational performance and management and site conditions. The Company plans to continue to grow this portfolio while also selling certain projects to investors. As of **July 31, 2023** January 31, 2024, the Company had **projects** one project representing an additional **19.4** 0.3 MW in various stages of development, and construction, which projects are project is expected to generate operating cash flows in future periods, if completed. Retaining long-term cash flow positive projects, combined with our service fleet, is expected to result in reduced reliance on new project sales to achieve cash flow positive operations, however, operations and performance issues could impact results. We have worked with and are continuing to work with lenders and financial institutions to secure construction financing, long-term debt, tax equity and sale-leasebacks for our project asset portfolio, but there can be no assurance that such financing can be attained, or that, if attained, it will be retained and sufficient.

As of **July 31, 2023** January 31, 2024, net debt outstanding related to project assets was **\$94.9** million **\$110.7** million. Future required payments, inclusive of principal and interest, totaled **\$110.8** million **\$134.8** million as of **July 31, 2023** January 31, 2024. The outstanding finance obligations under our sale-leaseback transactions, which totaled \$18.8 million as of **July 31, 2023** January 31, 2024, include an embedded gain of \$8.7 million representing which \$9.4 million represents the current carrying value of finance obligations less future required payments, which will be recognized at the end of the applicable lease terms. payments.

[Generation Operating Portfolio](#)

Our generation operating portfolio provides us with the full benefit of future cash flows, net of any debt service requirements.

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The following table summarizes our generation operating portfolio as of **July 31, 2023** **January 31, 2024**:

Project Name	Location	Power Off-Taker
Central CT State University ("CCSU")	New Britain, CT	CCSU (CT University)
Riverside Regional Water	Riverside, CA	City of Riverside (CA Municipality)
Quality Control Plant		
Pfizer, Inc.	Groton, CT	Pfizer, Inc.
Santa Rita Jail	Dublin, CA	Alameda County, California
Bridgeport Fuel Cell Project	Bridgeport, CT	Connecticut Light and Power Company (CT Utility)
Tulare BioMAT	Tulare, CA	Southern California Edison (CA Utility)
San Bernardino	San Bernardino, CA	City of San Bernardino Municipal Water Department
LIPA Yaphank Project	Long Island, NY	PSEG / LIPA, LI NY (Utility)
Groton Project	Groton, CT	CMEEC (CT Electric Co-op)
Toyota	Long Beach, CA	Southern California Edison; Toyota
Derby - CT RFP-2	Derby, CT	Eversource/United Illuminating (CT Utilities)
SCEF - Derby	Derby, CT	Eversource/United Illuminating (CT Utilities)
Total MW Operating:		100

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design rated output of 7.4 MW. Accordingly, rated capacity with respect to the Groton Proj design rated output at the time of the full implementation of the Technical Improvement Plan.

(2) As previously disclosed, the The Groton Project achieved commercial operations on December 31, 2022, the Company entered into an Amended and Restated PPA which modified and replaced the agreement with CMEEC to allow the Groton Project to operate at a reduced output of approximately 7.4 MW. The TIP ("TIP") is implemented with the goal of bringing the platform to its rated capacity of 7.4 MW by December 31, 2023. In conjunction with entering into the Amended and Restated PPA, on December 31, 2022, CMEEC declared that the plants are commercially operational at 6 MW and CMEEC and the Navy purposes, the commercial operations date had been achieved. The Navy also provided its commercial operations at 6 MW. The Company is incurring and will continue to incur performance guarantee fees under the Amended and Restated PPA as a result of ~~was previously~~ operating at an output below 7.4 MW. Although the Company believes it will successfully implement the TIP and bring the output of 7.4 MW by December 31, 2023, no assurance can be provided that such work will be completed on time. If the plants do not reach an output of 7.4 MW by December 31, 2023, the Amended and Restated PPA will be terminated and the Company will be subject to ongoing performance guarantee fees.

The following table summarizes projects in process, all of which are in backlog, as of July 31, 2023:

Project Name	Location	Power Off-Taker
Toyota	Los Angeles, CA	Southern California Edison; Toyota
CT RFP-2	Derby, CT	Eversource/United Illuminating (CT Utilities)
SCEF - Derby	Derby, CT	Eversource/United Illuminating (CT Utilities)
Trinity College	Hartford, CT	Trinity College
Total MW in Process:		—

(1) Rated capacity is the platform's design rated output (including as of the date of initiation of commercial operations) at a reduced output of approximately 6.0 MW. During the three months the Groton Project reached its design rated output of 7.4 MW.

Generation Projects in Process

The projects listed During fiscal year 2022, we entered into a power purchase agreement with Connecticut, for our 250 kW solid oxide fuel cell power generation system. Power and heat produced at Trinity's campus in Hartford, Connecticut, to lower energy cost and enhance energy reliability currently under development and the solid oxide fuel cell power generation system is expected to be completed in the second half of fiscal year 2024. Modules for our solid oxide fuel cell power generation system are manufactured at our manufacturing facility in various stages of development or on-site construction in Calgary, Alberta, Canada. Project updates are as follows:

- **Toyota - Port of Long Beach, CA - The Toyota Project.** This 2.8 MW Tri-gen platform (output of 2.3 MW), hydrogen and water. We have successfully completed the commissioning of the platform at the Port of Long Beach for Toyota (the "Toyota project"), and it is producing power and water that meets the stringent purity specifications required for mobility applications. The plant is currently under construction, we are only waiting on the receipt of the final fire department and related building permits to achieve commercial operations.
- **Derby, CT.** On-site construction of this 14.0 MW project continues to advance and the construction and installation of the majority of the balance of plant components on site required for the project. This utility scale fuel cell platform will contain five SureSource 300 units installed on engineered platforms alongside the Housatonic River. To date, the Company has invested \$52.9 million into the project, and our current expectation is that this project will commence commercial operations in the fourth calendar quarter of 2023.

In addition, on-site civil construction of the 2.8 MW project located in Derby, CT is advancing, and we expect that this project will also commence commercial operations by the end of the fourth calendar quarter of 2023. Connecticut.

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- **Trinity College.** During fiscal year 2022, we entered into a power purchase agreement with Connecticut, for our 250 kW solid oxide fuel cell power generation system. Power and heat will be used at Trinity's campus in Hartford, Connecticut, to lower energy cost and enhance efficiency. This project is currently under development and the solid oxide fuel cell power generation system will be installed in the summer of 2024. Modules for our solid oxide platform are manufactured in our research and development facility in Calgary, Alberta, Canada, and this project will be fully completed in Connecticut.

Backlog by revenue category is as follows:

- Service agreements backlog totaled \$136.6 million \$140.4 million as of July 31, 2023 January 31, 2024. Service agreements backlog represents revenue from maintenance and scheduled module exchanges for power plants under service agreements with three month year ended July 31, 2023 October 31, 2023, the Company entered into a 10-year agreement with Noeul Green Energy, Co. Ltd. ("Noeul Green Energy") for their 20 MW plant in Korea, approximately \$73 million \$75.6 million.

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- Generation backlog totaled \$915.1 million \$0.86 billion as of July 31, 2023 January 31, 2024. Generation backlog represents future contracted PPAs or approved utility tariffs.
- Product There was no product backlog as of July 31, 2023 was \$26 thousand, compared to \$22. January 31, 2024 and 2023.
- Advanced Technologies contract backlog totaled \$11.6 million \$23.4 million as of July 31, 2023 January 31, 2024. Advanced Technologies contract backlog primarily represents remaining revenue under the EMTEC/our Joint Development Agreement, a purchase order valued at \$11.6 million from Esso Nederland B.V. ("Esso"), an affiliate of EMTEC, and remaining revenue under our government projects.

Overall, backlog decreased by approximately 17.2% 3.4% to \$1.03 billion as of January 31, 2024, compared to \$1.28 billion as of July 31, 2023 January 31, 2023, compared to \$1.28 billion as of July 31, 2022, primarily as a result of the decline in generation backlog due to the decision to not move forward with certain generation projects during the fourth quarter of 2022. This decline in backlog was also due, in part, to the timing of revenue recognition under product, generation, service and other agreements since July 31, 2022 January 31, 2023. This decline in backlog was partially offset by new service agreements entered into during the three months ended January 31, 2023 October 31, 2023 and new Advanced Technologies contract backlog as a result of the purchase of EMTEC during the quarter ended January 31, 2024.

Backlog represents definitive agreements executed by the Company and our customers. Projects for which a PPA is included in generation backlog, which represents future revenue under long-term PPAs. The revenue in the future under a PPA is subject to the Company's completion of construction of the project. Should the Company not complete the construction of the project covered by a PPA, it will forgo future revenue under the PPA and may incur penalties and/or impairment charges related to the project. Projects sold to customers (other than the Company) are included in product sales and service agreements backlog, and the related generation backlog.

Together, the service and generation portion of backlog had a weighted average term of approximately 10 years based on the dollar amount of backlog and utility service contracts of up to 20 years in duration at inception.

Factors that may impact our liquidity

Factors that may impact our liquidity in the remainder of fiscal year 2023/2024 and beyond include:

- The Company's cash on hand and access to additional liquidity. As of July 31, 2023/January 31, 2024, cash equivalents totaled \$303.7 million and short-term investments in U.S. Treasury Securities had a total value of \$297.5 million. These securities have maturity dates ranging from August 8, 2023 to October 26, 2023/January 31, 2024.
- We bid on large projects in diverse markets that can have long decision cycles and uncertain outcomes.
- We manage our factory production rate based on expected demand and project schedules. Changes in demand can affect the timing of production. During the nine/three months ended July 31, 2023/January 31, 2024, we increased our production rate of approximately 31.9/33.2 MW at our Torrington manufacturing facility, compared to a production rate for the nine months ended July 31, 2022 of 38.5 MW. During the three months ended July 31, 2023, we reduced our annualized production rate to approximately 28.9 MW, compared to an annualized production rate of approximately 36.5 MW for the three months ended July 31, 2022. This reduction in production rate is primarily due to reduced staffing, moderating our production levels in our factory.

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Torrington facility. The Company continuously evaluates its facility as a result of market demand and make adjustments to our production rate, including material and staffing levels, at our Torrington facility. The Company has determined that the current levels are sufficient to satisfy the current demand for carbon capture.

- As project sizes and the number of projects evolve, project cycle times may increase. We may need to make investments of resources in advance of the receipt of any cash from the financing or sale of projects. These costs may include development costs, interconnection costs, costs associated with posting of letters of credit, insurance, security, and engineering, permitting, legal, and other expenses.
- The amount of accounts receivable and unbilled receivables as of July 31, 2023/January 31, 2024 was \$56.2 million/\$48.5 million (\$27.1/22.7 million of which is classified as current assets). The difference between the two amounts represents revenue that has been recognized in advance of billing the customer under the terms of the contract. Such costs have been funded with working capital and the unbilled amounts are expected to be collected from customers once we meet the billing criteria.

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under the contracts. Our accounts receivable balances may fluctuate as a result of any balance sheet items, individual contract milestones and progress on completion of our projects.

- The amount of total inventory as of **July 31, 2023** **January 31, 2024** and **October 31, 2022** **million \$105.6 million** (**\$7.5** **2.7** million is classified as long-term inventory) and **\$98.5 million** **classified as long-term inventory**, respectively, which includes work in process inventory totaling **\$67.8 million** **\$55.6 million**, respectively. Work in process inventory can generally be deployed as inventory requires further manufacturing prior to deployment. To execute on our business plan, we modules and procure balance of plant ("BOP") components in required volumes to support our products and potential customer contractual requirements. As a result, we may manufacture modules or advance of receiving payment for such activities. This may result in fluctuations in inventory and balance sheet date.
- The amount of total project assets as of **July 31, 2023** **January 31, 2024** and **October 31, 2022** **million \$260.8 million** and **\$232.9 million** **\$258.1 million**, respectively. Project assets consist of projects that are operating and producing revenue or are under construction. Project assets as of **2024** consisted of **\$170.4 million** **\$260.1 million** of completed, operating installations and **\$77.8 million** **in development**. As of **July 31, 2023** **January 31, 2024**, we had **43.7** **62.8 MW** of operating project assets attributed to the design rated output of the Groton Project although the Groton Project has been capacity at an output of approximately 6.0 MW since commencement of commercial operations. **million \$10.5 million** of revenue in the nine **for three** months ended **July 31, 2023** **January 31, 2024**.
- As of **July 31, 2023** **January 31, 2024**, the Company had 19.4 a 0.3 MW of projects **in** **construction**. **development**. To build out this portfolio, project, as of **July 31, 2023** **January 31, 2024**, investment in project assets to be made during fiscal year **2023** **2024** to be in the range of approximately \$10.0 million to \$30.0 million, which includes amounts expensed for \$10.0 million. This compares to approximately \$53.0 million during fiscal year 2023. The expected reduction in such expenditures is to the completion of the Derby and Toyota project. Projects, and it is expected that the lower expenditures will benefit the Company's liquidity position. To fund such the expected fiscal year 2024 expenditures, the Company will use unrestricted cash on hand and to seek sources of construction financing. In addition, once the project becomes operational, the Company will seek to obtain permanent financing (tax credits) to be expected to return cash to the business. For the **nine** **three** months ended **July 31, 2023**, project asset expenditures were **\$35.4 million** **\$7.5 million**. In addition, the Company expensed **the** **project**, which totaled **\$17.8 million** **\$1.9 million** for the **nine** **three** months ended **July 31, 2023** **January 31, 2024**.
- Certain of our PPAs for project assets in our generation operating portfolio and project assets are subject to fluctuating fuel price risks as well as the risk of being unable to procure the required amounts of available fuel sources. We seek to mitigate our fuel risk using strategies including: (i) fuel cost risk mitigation for our PPAs to allow for pass through of fuel costs (full or partial) where possible, which we have done for our operating project in Bridgeport, CT; CT (the "Bridgeport Fuel Cell Project"); (ii) procuring fuel under contracts with investment grade counterparties, which we have done for twenty years for our Tuftonboro project; and (iii) entering into long-term contracts with investment grade counterparties for the seven years of the eighteen year PPA for our LIPA Yaphank Project the initial two (through September 2029), a twenty year PPA for our 14.0 MW and 2.8 MW Derby project, Projects (through October 2029), a twenty year hydrogen power purchase agreement for our Toyota project; Project (through May 2029). The Company does not take a fundamental view on natural gas or other commodity pricing and uses various means to reduce commodity exposure. If the Company is unable to secure fuel on favorable economic terms, it may result in impairment charges.

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There are currently three projects in development with fuel sourcing risk, which are the Toyota project, the LIPA Yaphank Project, and the Derby, CT 14.0 MW and 2.8 MW projects, both of which require natural gas as a fuel source. The Company has entered into fuel supply contracts for the Toyota project in Derby, CT. The Company will look to extend the duration of these contracts should market conditions change. The Company is also evaluating fuel sourcing and risk mitigation strategies for the 2.8 MW project in Derby, CT are being assessed as the project operational dates become firm. Such strategies may require cash collateral or reserve fuel contracts. If the Company is unable to secure fuel on favorable economic terms, it may result in impairment charges for the Derby project assets and further charges for the Toyota project asset.

- Commitments Expenditures for property, plant and equipment are expected to range between \$6 \$75.0 million for fiscal year 2024. These amounts are in addition to the capital expenditures a Company in fiscal year 2023 which includes expected investments into upgrade our manu carbonate (including carbon capture) and solid oxide production capacity expansion, the add products and components, including the expansion of solid oxide manufacturing capac upgrades Calgary facility to and expansion of our business systems. Actual cash outlay for su MW which is expected to be dependent on, among other things, the timing of receipt of equip negotiated with suppliers, but we expect that cash for such capital expenditures will be expend 2024. To date completed in fiscal year 2023, 2024. We are also increasing the carbonate capabilit expected growth in carbon capture and recovery. During the first quarter of fiscal year 202 expenditures have totaled approximately \$28.0 million \$10.6 million.

Included in projected expenditures associated with the capacity expansion for molten carbona carbon capture platform manufacturing required for the assembly of the technology we joint EMTEC. The solid oxide production capacity expansion is underway in our Calgary, Canada facili

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expected to increase the capacity of the facility from 1 MW to 10 MW per year of solid oxide fuel to 40 MW per year of solid oxide electrolysis cell ("SOEC") production by the middle of fiscal year

We have made progress in advancing our carbonate and solid oxide platform capacity expansion

Carbonate Platform: At this time, the maximum annualized capacity (module manufacturing and conditioning) is 100 MW per year under the Torrington facility's current configuration when the facility is sized to accommodate the eventual annualized production capacity of up to 200 MW. Capital investment in machinery, equipment, tooling, labor and inventory.

The Company continues to invest in capability with the goal of reducing production bottlenecks including investments in automation, laser welding, and the construction of additional integrated lines. The Company also constructed a SureSource 1500 in Torrington during fiscal year 2022, which is currently in operation. In fiscal year 2023, the Company is investing in qualifying new supplier components and performance testing and validation of continued platform expansion. In fiscal year 2024, the Company is investing in the addition of a new SureSource 1500. This addition is expected to be completed in fiscal year 2024. This platform will allow potential customers to observe the operating plant and, given the targeted market of food and beverage companies, will allow for the sampling and testing of separated recovered CO₂ to verify quantity, quality or purity.

Solid Oxide Platform: Platforms: The Company continues to invest in product development and the development of two solid oxide platforms: power generation and electrolysis. Both platforms are based on the use of lightweight, electrode supported cells, which are configured into compact, lightweight stacks. This design minimizes electrolyte materials, leading to very low use of rare earth minerals compared to traditional designs. The electrodes do not require the platinum group materials that lower temperature systems require. The solid oxide electrolysis platform also have very low electrical resistance, leading to high efficiency in both power generation and electrolysis. Our solid oxide electrolysis platform can provide integrated products with the goal of offering complete customer solutions. Our solid oxide power generation platform can be integrated with steam generation and hydrogen drying systems, so it will be fed with water, not hydrogen. A steam supply can optionally be used to increase the electrical efficiency of the power generation platform (based on higher heating value). Our power generation platform can operate on natural gas blends, and is capable of combined heat and power operation at up to 80% efficiency (based on natural gas).

During the nine months year ended July 31, 2023 October 31, 2023, Versa Power Systems Ltd and FuelCell Energy, entered into a lease expansion, extension and amending agreement which enables Versa Ltd. in Calgary, Alberta, Canada to include an additional approximately 48,000 square feet of manufacturing space.

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approximately 80,000 square feet of space. The Company took possession of part of the adjacent building in early 2023 and took possession of the rest of the additional space on June 1, 2023 after certain leasehold improvements were completed to support increased manufacturing. In addition, long-lead process equipment has been ordered to support increased manufacturing capacity for the solid oxide platforms in Calgary. Upon the completion of the expansion project, the Company expects that it will be able to increase annual production capacity and that it will be able to produce up to 400 MW of annualized SOEC production per year. During the engineering and permitting phase of the expansion project, the Company has designed in flexibility that would allow us to further increase manufacturing capacity at our Calgary facility to facilitate the potential annualized production of up to an additional 400 MW of annualized SOEC production per year by leasing additional space and investing in various process optimizations in the future to realize the potential 800 MW of annualized SOEC production per year.

During calendar year 2023, our Calgary solid oxide manufacturing operation was expected to be operational in late calendar year 2023. The final stages of construction of the facility will involve the process of building four units: two units that will run internally for advanced testing and two units that will be externally. Of these commercial units for external delivery, one will be our electrolysis platform Laboratory ("INL"), and the other will be our distributed power platform for delivery to Trinity Chemicals. The Company will add additional staff for a 3-shift production operation to support the initial planned expansion to 400 MW of annualized SOEC production per year.

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long-term power purchase agreement. All four of these units are in the design, fabrication or early stages of construction. The final stages of construction of the facility will involve the process of building four units: two units that will run internally for advanced testing and two units that will be externally. Of these commercial units for external delivery, one will be our electrolysis platform Laboratory ("INL"), and the other will be our distributed power platform for delivery to Trinity Chemicals. The Company will add additional staff for a 3-shift production operation to support the initial planned expansion to 400 MW of annualized SOEC production per year.

The expansion of the Calgary manufacturing facility is phase 1 of the Company's planned expansion. While this expansion is expected to increase our production capacity from 400 MW of annualized SOEC production per year to 800 MW of annualized SOEC production per year, the Company also plans to add an additional 400 MW of solid oxide power generation capacity in the United States. Early facility design and engineering requirements have been developed, and an extensive search in the United States for a potential location for a new manufacturing facility is underway. The Company is currently in the process of examining or actively applying for various financial incentives in the United States to support the expansion of its manufacturing operations in the United States. The Company is currently in the process of examining or actively applying for various financial incentives in the United States to support the expansion of its manufacturing operations in the United States. The Company is currently in the process of examining or actively applying for various financial incentives in the United States to support the expansion of its manufacturing operations in the United States.

Lastly, the Company is in the process of examining or actively applying for various financial incentives in the United States to support the expansion of its manufacturing operations in the United States. The Company is currently in the process of examining or actively applying for various financial incentives in the United States to support the expansion of its manufacturing operations in the United States.

capacity for clean energy manufacturing.

- Company-funded research and development expenses are expected to be in the range between \$70.0 million for fiscal year 2023, 2024. During the nine months ended July 31, 2023, January 31, 2024, the Company spent \$43.0 million \$14.4 million of Company-funded research and development expenses as commercialization of our Advanced Technologies solutions including distributed hydrogen, energy storage and hydrogen power generation. The Company continues to advance its including increasing production of solid oxide fuel cell modules and expanding manufacturing capacity to work with INL on a demonstration high-efficiency electrolysis platform. This project, done with the Department of Energy, is intended to demonstrate that the Company's platform can operate at the currently available electrolysis technologies through the inclusion of an external heat source. In support of the commercialization activity for the solid oxide platform, the Company recently commenced the development of advanced prototypes: (i) a 250 kW power generation platform, and (ii) a 1 MW high-efficiency electrolysis platform. The advanced prototypes are in process and expected to be completed during calendar year 2024.
- Under the terms of certain contracts, the Company will provide performance security for future performance obligations. As of January 31, 2024, we had pledged approximately \$32.7 million \$51.3 million of our collateral for performance security and for letters of credit for certain banking requirements and expect to increase with a growing backlog and installed fleet.

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- On August 16, 2022, the U.S. Inflation Reduction Act ("IRA") was signed into law. The provisions of the IRA, among other things, incentivize domestic clean energy investment, manufacturing and production. The IRA includes provisions that provide incentives for clean energy through enhancement of the Investment Tax Credit ("ITC"). The ITC is a tax credit for clean energy component sourcing and production in the United States, enhancements to the tax code that provides credits for carbon dioxide sequestration intended to incentivize investment in carbon dioxide sequestration, and certain incentives for clean energy projects that use environmental brownfields in economically challenged areas. In addition, the IRA would provide a 10-year Production Tax Credit ("PTC") for the production of clean hydrogen at a qualified facility that begins construction prior to January 1, 2033, with the option to extend the PTC for an additional 10 years. The Company views the enactment of the IRA as favorable for the overall business. However, the Company is continuing to evaluate the overall impact and potential impact of the IRA on the Company's current and planned products and the markets in which the Company seeks to sell its products.
- As global policies evolve, there may be incentives available to the Company and potential partners that could accelerate the growth of projects utilizing FuelCell Energy's platform. We continue to see a global transition through legislation and economic incentives globally. For example, the European Union's Green Deal includes a \$270 billion program that would offer tax breaks for businesses investing in net-zero emissions. The Korean Hydrogen Economy Roadmap aims to produce 6.2 million fuel cell electric vehicles and 1,000 hydrogen refueling stations by 2040. Additionally, Japan's Sixth Strategy Energy Plan would encourage the use of hydrogen as a fuel source through increased hydrogen production as well as the broad deployment of carbon dioxide sequestration technology.

Depreciation and Amortization

As the Company builds project assets and makes capital expenditures, depreciation and amortization increase. For the three months ended July 31, 2023, January 31, 2024 and 2022, depreciation was \$8.6 million and \$5.3 million \$5.4 million, respectively (of these totals, approximately \$5.4 million \$4.2 million for the three months ended July 31, 2023, January 31, 2024 and 2022, respectively, relate to the amortization of project assets in our generation operating portfolio). For the nine months ended July 31, 2023, January 31, 2024 and 2022, depreciation and amortization totaled \$18.7 million and \$16.4 million, respectively (of these totals, approximately \$16.4 million \$14.2 million for the nine months ended July 31, 2023 and 2022, respectively, relate to depreciation of project assets in our generation operating portfolio and amortization of a generation intangible asset).

Cash Flows

Cash and cash equivalents and restricted cash and cash equivalents totaled \$336.4 million \$336.4 million as of July 31, 2023, January 31, 2024 compared to \$481.0 million \$299.6 million as of October 31, 2022, October 31, 2023.

2023 January 31, 2024, unrestricted cash and cash equivalents was \$303.7 million \$297.5 million compared to \$32.7 million \$51.3 million, of which \$6.1 million \$6.0 million \$26.7 million \$45.4 million was classified as non-current, compared to \$23.0 million \$49.6 million equivalents as of October 31, 2022 October 31, 2023, of which \$4.4 million \$5.2 million was classified as non-current. \$44.5 million was classified as non-current.

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The following table summarizes our consolidated cash flows:

	Nine Months Ended July 31	
(dollars in thousands)	2023	2022
Consolidated Cash Flow Data:		
Net cash used in operating activities	\$ (124,422)	\$ (88,044)
Net cash used in investing activities	(138,493)	(39,444)
Net cash provided by financing activities	118,161	147,344
Net cash provided by (used in) investing activities		
Net cash provided by (used in) financing activities		
Effects on cash from changes in foreign currency rates	132	(3,000)
Net (decrease) increase in cash, cash equivalents and restricted cash	\$ (144,622)	\$ 19,444
Net increase (decrease) in cash, cash equivalents and restricted cash		

The key components of our cash inflows and outflows were as follows:

Operating Activities – Net cash used in operating activities was \$124.4 million \$58.3 million during July 31, 2023 January 31, 2024, compared to \$88.1 million \$53.4 million of net cash used in operating months ended July 31, 2022 January 31, 2023.

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Net cash used in operating activities for the nine three months ended July 31, 2023 January 31, 2024 versus loss of \$78.6 million \$44.4 million, increases in inventory of \$18.4 million, unbilled receivables of \$ assets of \$12.0 million \$1.6 million and decreases in accounts receivable payable of \$5.2 million \$6.0 million liabilities of \$4.0 million partially offset by an increase in deferred revenue of \$22.3 million \$1.2 million million partially offset by a decrease in inventories accounts receivable of \$5.3 million, an increase in \$0.5 million and non-cash adjustments of \$18.2 million \$17.8 million.

Net cash used in operating activities for the **nine** **three** months ended **July 31, 2022** **January 31, 2023** v loss of **\$105.2 million** **\$21.1 million**, increases in inventories of **\$22.8 million** **\$10.3 million**, unbilled re other assets of **\$6.2 million** **\$1.0 million** and unbilled receivables of **\$0.2 million** and a decrease dec **\$2.0 million** **\$18.1 million**, accrued liabilities of **\$7.1 million** and accounts payable of **\$1.1 million**, p accounts receivable of **\$2.0 million**, increases in accrued liabilities of **\$14.5 million** and accounts pay and non-cash adjustments of **\$26.6 million** **\$8.8 million**.

Investing Activities – Net cash used in provided by investing activities was **\$138.5 million** **\$86.9 mil** ended **July 31, 2023** **January 31, 2024**, compared to net cash used in investing activities of **\$39.5** **\$1** **nine** **three** months ended **July 31, 2022** **January 31, 2023**.

Net cash used in provided by investing activities for the **nine** **three** months ended **July 31, 2023** **Janu** million for the purchase of U.S. Treasury Securities, **\$35.4 million** of project asset expenditures expenditures, offset by funds received from the maturity of U.S. Treasury Securities of **\$120.9 million** used of **\$125.4 million** for the purchase of U.S. Treasury Securities, **\$7.5 million** of project asset exp capital expenditures.

Net cash used in investing activities for the **nine** **three** months ended **July 31, 2022** **January 31, 202** million for the purchase of U.S. Treasury Securities, **\$7.8 million** of capital expenditures and expenditures and **\$15.8 million** of capital expenditures.

Financing Activities – Net cash provided by financing activities was **\$118.2 million** **\$20.6 million** durin **July 31, 2023** **January 31, 2024**, compared to net cash provided by used in financing activities of **\$147.** **nine** **three** months ended **July 31, 2022** **January 31, 2023**.

Net cash provided by financing activities during the **nine** **three** months ended **July 31, 2023** **January** **million** **\$25.1 million** of net proceeds contributions received from sales of common stock a noncontr partnership for the Derby and **\$80.5 million** of proceeds from debt Groton Projects, offset by debt payments of debt issuance costs of **\$2.9 million** **\$2.6 million**, payments for taxes related to net share **\$0.4 million** **\$1.0 million**, payment of **\$2.4 million** **\$0.8 million** in preferred dividends and distribution to **million** **\$0.2 million**.

Net cash provided by used in financing activities during the **nine** **three** months ended **July 31, 2022** **January** **\$145.4 million** of net proceeds from sales of common stock and **\$11.9 million** of net contributions noncontrolling interest in the LIPA Yaphank Project, partially offset by debt repayments of **\$7.2 million** \$ for taxes related to net share settlement of equity awards of **\$0.3 million**, payment of **\$2.4 million** dividends and distribution to noncontrolling interest of **\$0.2 million** **\$0.1 million**.

Sources and Uses of Cash and Investments

In order to consistently produce positive cash flow from operations, we need to increase order flow levels, leading to lower costs on a per unit basis. We also continue to invest in new product and n result, we are not generating positive cash flow from our operations. Our operations are funded prir from product sales, service contracts, generation assets and Advanced Technologies contracts, as we linked securities, issuances of corporate and project level debt, and monetization of technology through

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Commitments and Significant Contractual Obligations

A summary of our significant commitments and contractual obligations as of **July 31, 2023** Janu payments by fiscal year are as follows:

	Payments Due by Period			
	Total	Less than 1 Year	1 - 3 Years	3 - 5 Years
(dollars in thousands)				
Purchase commitments (1)	\$ 86,885	\$66,456	\$20,372	\$ 57
Term loans (principal and interest)	111,423	16,233	25,853	19,863
Capital and operating lease commitments (2)	19,263	1,123	2,490	2,644
Operating lease commitments (2)				
Sale-leaseback finance obligations (3)	10,113	1,471	2,903	2,583
Natural gas and biomethane gas supply contracts (4)	33,700	13,003	16,431	3,938
Series B Preferred dividends payable (5)	-	-	-	-
Totals	\$261,384	\$98,286	\$68,049	\$29,085

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

(2) Future minimum lease payments on finance and operating leases.

(3) Represents payments due under sale-leaseback transactions and related financing agreements with our wholly owned subsidiaries and Crestmark Equipment Finance ("Crestmark"). Lease payments for each agreement are generally payable in fixed quarterly installments over a 10-year period.

(4) During fiscal year 2020, the Company entered into a 7-year natural gas contract for the Company's Project, with an estimated annual cost per year of \$2.0 million, under which service began on December 31, 2020. During the second quarter of fiscal year 2023, the Company entered into a 2-year Biomethane gas contract for the Company's Project, under which service began on May 1, 2023. Also, during the second quarter of fiscal year 2023, the Company entered into (a) a 29-month 6-year natural gas contract for the Company's 14.0 MW Derby project, which began on June 1, 2023, and (b) a 6-year natural gas contract for the Company's 2.8 MW SCE project, which began in November 2023. The costs of the contracts are expected to be offset by generation of electricity.

(5) We pay \$3.2 million in annual dividends on our Series B Preferred Stock, if and when declared. The amount of the dividend payment, if dividends are declared, has not been included in this table as we cannot reasonably calculate the number of shares of our common stock that are issuable at the then prevailing conversion price. The number of shares of our common stock that are issuable at the then prevailing conversion price (\$1,692 per share at July 31, 2023) exceeds 150% of the then prevailing conversion price (\$1,692 per share at July 31, 2023) for 20 trading days during any consecutive 30 trading day period.

Outstanding Loans as of July 31, 2023 *January 31, 2024*

OpCo Project Financing Facility

On May 19, 2023, FuelCell Energy Opco Finance 1, LLC ("OpCo Borrower"), a wholly owned subsidiary of FuelCell Energy, Inc. ("Parent"), entered into (the (as amended, the "Financing Agreement") with, by and among Investec Bank plc in its capacity as a lender ("BMO Lender"), administrative agent ("Administrative Agent"), and collateral agent ("Collateral Agent"); Investec Bank plc in its capacity as an arranger and sole bookrunner; Bank of Montreal (Chicago Branch) in its capacity as a lender ("BMO Lender"); and each of Liberty Bank, Amalgamated Bank and Connecticut Green Bank as lenders (collectively, the "Lenders") for a term loan facility in an amount not to exceed \$80.5 million (the "Term Loan") and a letter of credit facility in an amount not to exceed \$6.5 million (the "Term Credit Facility", the "OpCo Financing Facility").

OpCo Borrower's obligations under the Financing Agreement are secured by Parent's interest in six projects: (i) the Bridgeport Fuel Cell Project, located in Bridgeport, Connecticut; (ii) the Central CT State Project, located in New Britain, Connecticut; (iii) the Pfizer Project, located in Groton, Connecticut; (iv) the LIPA Yap Island Project, located in New York; (v) the Riverside Regional Water Quality Control Plant Project, located in Riverside, California; and (vi) the Rita Jail Project, located in Alameda County, California (each, a "Project" and collectively, the "Projects").

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Project Company"), the entity that owns the Bridgeport Fuel Cell Project; (ii) New Britain Renewable Energy Company"), the entity that owns the Central CT State University Project; (iii) Groton Fuel Cell 1, LLC (the entity that owns the Pfizer Project; (iv) Riverside Fuel Cell, LLC (the "Riverside Project Company"), the entity that owns the Riverside Regional Water Quality Control Plant Project; (v) SRJFC, LLC (the "Santa Rita Project Company"), the entity that owns the Santa Rita Jail Project; and (vi) Fuel Cell YT Holdco, LLC (the "Class B Member"), the entity that owns the interest in YTBFC Holdco, LLC (the "Yaphank Tax Equity Partnership"), the tax equity partnership with YTBFC Holdco, LLC (the "Class A Member"), as tax equity investor, which Yaphank Tax Equity Partnership, in turn, owns the LIPA Yaphank Project.

At the time of closing on the OpCo Financing Facility: (i) the Bridgeport Fuel Cell Project was subordinated indebtedness to Liberty Bank, Fifth Third Bank and Connecticut Green Bank in the aggregate amount of \$11.4 million; and (ii) the Pfizer Project, the Riverside Regional Water Quality Control Plant Project and the Yaphank Project were subject to sale and leaseback transactions and agreements with PNC Energy Capital, LLC ("PNC"). The amounts, including sales taxes, were approximately \$15.7 million, \$3.7 million and \$2.8 million, respectively. At the time of closing on the OpCo Financing Facility, all of the foregoing indebtedness and lease buyout amounts were released from restricted and unrestricted reserve accounts held at PNC at the time of closing, resulting in the applicable project company's companies' long-term indebtedness to PNC. The three leased projects from PNC, the termination of the agreements with PNC related to the sale-leaseback transactions and the termination of the senior and subordinated credit agreements with, the related promissory notes issued by the project companies and security agreements with, Liberty Bank, Fifth Third Bank and Connecticut Green Bank relate to the Project. Further, in connection with the closing on the OpCo Financing Facility and the termination of the swap agreement with PNC, the credit agreements with Liberty Bank, Fifth Third Bank and Connecticut Green Bank related to the Project. The Parent and the Project Company agreed that the obligations arising out of the swap agreement were terminated and waived and the swap agreement was terminated. In addition, in connection with closing on the OpCo Financing Facility, proceeds of the Term Loan were used to repay the Parent's long-term indebtedness to Connecticut Green Bank in the amount of approximately \$1.8 million.

At the closing, \$80.5 million, the entire amount of the Term Loan portion of the OpCo Financing Facility, was used to pay the payment of fees and transaction costs (including fees to the Lenders and legal costs) of approximately \$1.5 million. The remaining proceeds of approximately \$77.6 million were used as follows: (i) approximately \$15.0 million was used to repay the approximately \$7.3 million released from restricted and unrestricted reserve accounts held at PNC at the time of closing, including sales taxes referred to above and to re-acquire the three projects owned by the Project Company; (ii) approximately \$11.4 million was used to extinguish the indebtedness to Liberty Bank, Fifth Third Bank relating to the Bridgeport Fuel Cell Project; (iii) approximately \$1.8 million was used to repay the Project Company's long-term indebtedness to Connecticut Green Bank; (iv) \$14.5 million was used to fund a capital expenditure on the Project maintained pursuant to the terms and conditions of the Financing Agreement (which is classified as restricted cash on the Company's Consolidated Balance Sheets); and (v) approximately \$34.9 million was distributed to the Project Company as determined in its sole discretion. In addition, in connection with the extinguishment of the Company's long-term indebtedness to Connecticut Green Bank referred to above, approximately \$11.2 million of restricted cash was released from restricted and unrestricted reserve accounts held at PNC and Fifth Third Bank. Taking into consideration the release of such funds, the total net proceeds of the OpCo Financing Facility transactions were approximately \$46.1 million (which is classified as unrestricted cash on the Company's Consolidated Balance Sheets).

The Term Loan portion of the OpCo Financing Facility will accrue interest on the unpaid principal amount of such Term Loan until the maturity date thereof at a rate per annum during each Interest Period (as defined in the Financing Agreement) for such Term Loan equal to (A) with respect to SOFR Rate Loans, (i) the Adjusted Daily Interest Period with respect to SOFR Rate Loans *plus* (ii) the Applicable Margin, and (B) with respect to Base Rate from time to time in effect *plus* (ii) the Applicable Margin (in each case as defined in the Financing Agreement). The Applicable Margin for SOFR Rate Loans is 2.5% for the first four years of the term and thereafter, 2.0%. The Applicable Margin for Base Rate Loans is 1.5% for the first four years of the term and thereafter, 2.0%. At the closing, in consideration of the entire amount of the Term Loan, OpCo Borrower elected to make such draw down a SOFR Rate Loan for a period of three months. After the initial Interest Period of three months, OpCo Borrower may elect both (i.e., one month, three months or six months).

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months) and whether the Term Loan will be treated as a SOFR Rate Loan or a Base Rate Loan for which quarterly principal payments are required to be made quarterly.

Quarterly principal amortization obligations are also required to be made (based on 17-year principal amortization, with the Term Loan fully repaid in 2039), with quarterly amortization payments based on a 1.30x debt service coverage ratio. The quarterly cash flows (before giving effect to module replacement expenses and module replacement drawdowns) will be used to make principal payments on a seven-year term, maturing on May 19, 2030.

Pursuant to the terms and conditions of the Financing Agreement, OpCo Borrower is required to maintain a debt service reserve to pay for expected module replacements. The total reserve balance is required to reach \$29.0 million by December 31, 2029. The reserve was funded out of the closing advance of the Term Loan and the remainder of which is to be funded through the end of the funding schedule through cash flows generated by the Projects set forth in the Financing Agreement (including the final drawdown on December 31, 2029).

Pursuant to the terms and conditions of the Financing Agreement, OpCo Borrower is required to maintain a debt service reserve to pay for expected module replacements. The total reserve balance is required to reach \$29.0 million by December 31, 2029. The reserve was funded out of the closing advance of the Term Loan and the remainder of which is to be funded through the end of the funding schedule through cash flows generated by the Projects set forth in the Financing Agreement (including the final drawdown on December 31, 2029).

Pursuant to the Financing Agreement, within 30 days of the financial close of the Financing Agreement, OpCo Borrower is required to enter into one or more hedge transactions, with a Lender or an affiliate thereof pursuant to the terms of the Financing Agreement, to hedge OpCo Borrower's interest rate exposure relating to the Term Loan. The hedge transactions are required to be in effect at all times during the entire amortization period and have a notional amount subject to the hedge transactions at any time equal to at least 75% and no more than 105% of the aggregate principal amount of the Term Loan outstanding (taking into account scheduled amortization of the Term Loan).

Upon closing, on May 19, 2023, OpCo Borrower entered into an ISDA 2002 Master Agreement (the "ISDA Master Agreement") and an ISDA Schedule to the 2002 Master Agreement (the "Investec Schedule") with Investec Bank plc as a hedge provider. On May 22, 2023, OpCo Borrower entered into an ISDA 2002 Master Agreement (the "BMO Master Agreement") and an ISDA Schedule to the 2002 Master Agreement (the "BMO Schedule") with Bank of Montreal (Chicago Branch) as a hedge provider. On May 22, 2023, OpCo Borrower entered into a series of interest rate swap agreements with these hedge providers to protect against the risk of changes in the floating SOFR rate associated with 100% of the aggregate principal balance of the Term Loan. Pursuant to the terms of such agreements, OpCo Borrower will pay a fixed rate of interest of 3.716%. The net interest rate on the ISDA Master Agreement and the swap transaction is 6.366% in the first four years and 6.866% thereafter. The obligations of the hedge providers under the interest rate swap agreements are treated as obligations under the Financing Agreement.

accordingly, are secured, on a pari passu basis, by the same collateral securing the obligations Financing Agreement, which collateral is described below. The Company has not elected hedge accounting for derivatives. As a result, the derivative will be remeasured to fair value quarterly, with the resulting gains/losses recorded in the financial statements. The fair value adjustment for the quarter ended January 31, 2024 resulted in a loss of \$3.5 million. On January 31, 2024, SOFR swap rates dropped by almost 100 basis points.

The Financing Agreement contains certain reporting requirements and other affirmative and negative covenants that are customary for transactions of this type. Included in the covenants are covenants that: (i) the Yaphank Project will have the option to extend its current gas agreement by ongoing three year extensions of its current gas agreement; (ii) any annual operating expense budget for the Yaphank Project must be consistent with the Base Case Model (as defined in the Financing Agreement) for that year be approved by the Required Lenders (as defined in the Financing Agreement) if such budget constitutes more than 50% of the amounts loaned); (iii) OpCo Borrower maintain a debt service coverage ratio of 1.20:1.00 (based on the trailing 12 months and tested every six months); and (iv) the Class B Member has the option to purchase the Class A Member's interest in the Yaphank Tax Equity Partnership during the "flip" "Flip Point" as set forth in the limited liability company agreement for the Yaphank Tax Equity Partnership. The Financing Agreement also contains customary representations and warranties and customary events of default. Upon the occurrence of an event of default, the outstanding loans under the Financing Agreement to become immediately due and payable.

The Term Loan may be prepaid at any time at the option of OpCo Borrower without premium or penalties or "prepayment costs" if such prepayment occurs other than at the end of an Interest Period. In addition, there are certain mandatory prepayment requirements.

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mandatory repayments required under the Financing Agreement, including in connection with any sale of the Yaphank Project or of any of the LIPA Yaphank Project, the Bridgeport Fuel Cell Project or the Pfizer Project. If of the Yaphank Project or of any of the LIPA Yaphank Project, the Bridgeport Fuel Cell Project or the Pfizer Project. If of the Riverside Regional Water Quality Control Plant Project, the Santa Rita Jail Project or the

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Central CT State University Project, OpCo Borrower is required to prepay an amount of the Term Loan in an amount equal to the fair value of the disposed Project.

Simultaneously with OpCo Borrower entering into the Financing Agreement, FCEF (as pledgor), OpCo Borrower, the Bridgeport Project Company, the Pfizer Project Company, the Riverside Project Company, the Santa Rita Project Company, the CCSU Project Company and the Class B Member, each as a subsidiary grantor party and guarantor party to the Security Agreement, entered into the Security Agreement (the "Security Agreement") with Investec Bank plc as collateral agent for the Term Loan Facility, the LC Facility and the hedge agreements (i) FCEF granted to Collateral Agent a security interest in all of FCEF's equity interest in OpCo Borrower; (ii) OpCo Borrower granted to Collateral Agent a security interest in all of OpCo Borrower's assets consisting of its equity interests in the Bridgeport Project Company, the Riverside Project Company, the Santa Rita Project Company, the CCSU Project Company and the Class B Member; (iii) the Bridgeport Project Company, the Pfizer Project Company, the Riverside Project Company, the Santa Rita Project Company, the CCSU Project Company granted to Collateral Agent a security interest in all of each such entity's assets, including its respective generation facilities and project agreements; and (iv) the Class B Member granted to Collateral Agent a security interest in all of the Class B Member's assets.

in all of such Class B Member's assets, consisting principally of its equity interest in the Yaphank Tax Entity, the Security Agreement, each of the subsidiary grantor parties jointly and severally guaranteed payable by the Class B Member under the Security Agreement.

Simultaneously with the execution of the Financing Agreement, OpCo Borrower, Investec Bank Administrative Agent and Liberty Bank as Depositary Agent entered into a Depositary Agreement pursuant to which OpCo Borrower established certain accounts at Liberty Bank, all of which were for security for the Term Loan Facility, the LC Facility and the hedge agreements, including a Revenue Account; a Redemption Account (for prepayments); a Capital Expenditure Reserve Account; and a Discretionary Account (in each case as defined in the Depositary Agreement). Pursuant to the terms of the Financing Agreement, OpCo Borrower may make quarterly distributions to FCEF and Parent provided that: (i) no Discretionary Account (in each case as defined in the Financing Agreement) exists under the OpCo Financing Facility; (ii) all funds in the Capital Expenditure Reserve Account have been disbursed; (iii) no letter of credit loans or unpaid drawings are outstanding with regard to any drawn down Facility; (iv) OpCo Borrower has maintained a greater than 1.20:1.00 debt service coverage ratio for the OpCo Financing Facility; and (v) no Cash Diversion Event (i.e., certain events that would adversely impact distributions to the Lenders, including the LIPA Yaphank Project, as further defined in the Financing Agreement) has occurred. Beginning in 2025 and continuing until the quarter ending March 2026, prior to making contributions to the Debt Service Reserve Account or the Capital Expenditure Reserve Account or having funds available for distribution, out of operating cash flows, OpCo Borrower will be required to make a quarterly payment to the Administrative Agent (on behalf of the Lenders) in the amount of \$1,000,000, which amount will be applied to outstanding principal.

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Back Leverage Financing

On August 18, 2023, FuelCell Energy Finance Holdco, LLC ("Holdco Borrower"), a wholly owned subsidiary of Parent, entered into: (i) a Credit Agreement (the "Senior Back Leverage Agreement") among Liberty Bank, in its capacities as a lender ("Liberty Lender"), administrative agent (the "Administrative Agent") and lead arranger, and Amalgamated Bank, in its capacity as a lender ("Amalgamated Lender" and, together with Liberty Lender, the "Senior Back Leverage Lenders"), for a term loan facility in an amount not to exceed an aggregate of 50% by Liberty Lender and 50% by Amalgamated Lender (such facility, the "Senior Back Leverage Loan, a "Senior Back Leverage Loan" and such term loans together, the "Senior Back Leverage Loans" (the "Subordinated Back Leverage Credit Agreement") with Connecticut Green Bank, Loans; ("Subordinated Administrative Agent") and lender ("Subordinated Back Leverage Lender"), for a term loan not to exceed \$8.0 million (such facility, the "Subordinated Back Leverage Loan Facility" and such term loan, the "Subordinated Back Leverage Loan"). The Senior Back Leverage Lenders and the Subordinated Back Leverage Lender are collectively referred to as the "Back Leverage Lenders."

Holdco Borrower's obligations under the Senior Back Leverage Credit Agreement and the Subordination Agreement are secured by a lien on all of Holdco Borrower's assets, consisting principally of its Class B Interests in Groton Station Fuel Cell Holdco, LLC (the "Groton Tax Equity Holdco"). Class A Interests in the Groton Tax Equity Holdco are held by East West Bank. Holdco Borrower is the Groton Tax Equity Holdco. The Groton Tax Equity Holdco's primary asset is ownership of all of the Groton Station Fuel Cell, LLC (the "Groton Project Company"). The Groton Project Company, in turn, owns a power plant at the U.S. Navy Submarine Base New London located in Groton, Connecticut (the "Groton Project").
In 2019, additional context concerning the relationship among the parties with respect to the Senior Back Leverage Credit Agreement and the Subordination Agreement was provided in the Amended and Restated Power Purchase Agreement, dated December 16, 2022, between the Groton Project Company and its Parent, Holdco Borrower, and the Groton Project Company and its Subsidiary, Groton Station Fuel Cell Holdco, LLC. The Amended and Restated Power Purchase Agreement, dated December 16, 2022, between the Groton Project Company and its Parent, Holdco Borrower, and the Groton Project Company and its Subsidiary, Groton Station Fuel Cell Holdco, LLC, is referred to as the "Amended and Restated Power Purchase Agreement".

Municipal Electric Energy Cooperative ("CMEEC"), pursuant to which the Groton Project Company and CMEEC agreed to purchase from the Groton Project Company, all of the electricity output produced in accordance with the terms and conditions of the Amended and Restated PPA.

At the closing (the "Closing") of each of the Senior Back Leverage Loan Facility and the Subordinated Back Leverage Loan Facility, which occurred simultaneously on August 18, 2023 (the "Closing Date"), the entire amount of each Loan Facility and the Subordinated Back Leverage Loan Facility was drawn down in the aggregate and payment of fees and transaction costs (including fees to the Back Leverage Lenders and legal costs) in the aggregate, the remaining proceeds of approximately \$19.6 million were used as follows: (i) approximately \$1.8 million was used to fund debt service reserve accounts ("DSCR Reserve Accounts") for the Senior Back Leverage Lenders in equal amounts of approximately \$0.83 million for Liberty Lender and approximately \$0.83 million for Amalgamated Lender; (ii) approximately \$3.25 million was used to fund operations and maintenance and module replacement reserve accounts in equal amounts of approximately \$1.625 million for Liberty Lender and approximately \$1.625 million for Amalgamated Lender; (iii) approximately \$0.3 million was used to fund a long-term DSCR Reserve Account for the Amalgamated Lender; and (iv) the remaining amount of approximately \$11.1 million was released to Parent from the Groton Project Company. The proceeds of the Senior Back Leverage Loan Facility were used to make Output Shortfall Payments (which are cash payments required to be made by the Groton Project Company in the event the Company produces electricity in any year less than the minimum required amount for such year) totaling approximately \$3.0 million, which were deposited into a payment reserve account, and (b) pay approximately \$3.0 million to Connecticut Green Bank to settle the Company's represented payment, in full, of all outstanding obligations under Parent's loan agreement with the Groton Project Company, taking into account such Output Shortfall Payments and such payment to Connecticut Green Bank. The remaining amount of approximately \$4.8 million will be classified as unrestricted cash on the Company's Consolidated Balance Sheet.

The portion of the Senior Back Leverage Loan provided by Liberty Lender will accrue interest or the portion of \$1.8 million the Senior Back Leverage Loan provided by Amalgamated Lender will accrue interest at a rate per annum calculated from the date of such Senior Back Leverage Loan until the maturity date thereof, which a "Carbon Offset Event" is not continuing and 7.32% at all times at which a "Carbon Offset Event" has occurred and is continuing. A "Carbon Offset Event" is deemed to occur if Holdco or indirect subsidiary thereof does not purchase carbon offsets from an Acceptable Carbon Offset Provider, in the "Green Bank Loan Agreement"). On and effective as of December 19, 2019, the Company entered into (defined below) each fiscal year in an amendment (amount equal to the Green Bank Loan Amendment"). Upon lesser of (i) the execution of the Green Bank Amendment (Annual Carbon Offset Cap for such fiscal year, which is derived based on December 19, 2019, Connecticut Green Bank made an additional payment to the Company in the aggregate principal amount of \$3.0 million (the "December 2019 Loan"), which was to pay fees related to the May 9, 2019 acquisition of the Bridgeport Fuel Cell Project and the related subordination of the Groton Project's debt to the December 2019 Loan, which was terminated in May 2023), other fees and interest, and (ii) thereafter, for general corporate purposes.

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The Green Bank Amendment provided that, until such time as the loan (which included both the outstanding principal amount of the original loan under the Green Bank Loan Agreement and the outstanding principal amount of the December 2019 Loan) was repaid in its entirety, interest on the outstanding balance of the loan shall be Senior Back Leverage Lender multiplied by the Groton Project's annual carbon emissions for such year and divided by the total carbon dioxide emissions of the Groton Project, and (ii) the Annual Carbon Offset Cap for such fiscal year, which is \$12.66 multiplied by the Carbon Offset Price for such fiscal year. The "Carbon Offset Price" is the price per ton of carbon dioxide, of the carbon offsets available for purchase from an Acceptable Carbon Offset Provider. The "Carbon Offset Provider" is either Climate Vault or any other seller of carbon offsets acceptable to Amalgamated Lender.

Quarterly principal amortization and interest payments are required to be made by Holdco Borrower Loans based on a ten-year amortization period. The Senior Back Leverage Loans have a seven-year 2030, at which time all outstanding principal is due.

The Subordinated Back Leverage Loan will accrue interest at a rate per annum equal to 8% for the period "Step Down Date" and, after the "Step Down Date," at the lesser of 8% per annum, payable by or the monthly 10 year U.S. Treasury Note plus 275 basis in arrears. Interest payments made by the Company minimum floor of 5% per annum). The "Step Down Date" is the date on which both of the Green applied first to interest that had accrued on the outstanding principal balance of the original loan Agreement and then to interest that had accrued on the December 2019 Loan.

The Green Bank Amendment also modified the repayment and mandatory prepayment terms and events following events have occurred: Holdco Borrower has purchased East West Bank's Class A Interest Loan Agreement. Under Groton Tax Equity Holdco and the Green Bank Amendment, Senior Back Leverage Loans in full. Interest is payable each quarter based on an agreed upon schedule.

Pursuant to the extent that Subordinated Back Leverage Loan Facility, during the "Interest Only Period" Borrower is required to make quarterly payments of principal in amounts equal to 50% of excess cash Credit Agreement, dated May 9, 2019, among Bridgeport Fuel Cell, LLC, Liberty Bank and Fifth Amendment" (which was terminated in May 2023) were eligible for disbursement available to Bridgeport Section 6.23(c) Holdco Borrower. For purposes of the BFC Credit Agreement, such funds were to Bank until foregoing, excess cash flow is all excess cash flow of Holdco Borrower after the loans were Amendment further provided that any unpaid balance payment of the loan required principal and all of Green Bank Loan Agreement would be due and payable on May 9, 2026. Finally, with respect to mandatory Bank Amendment provided that, when the Company closed interest on the subordinated project Commitment Letter, dated February 6, 2019, issued by Connecticut Green Bank to Groton Station Fuel to provide a subordinated project term loan to Groton Fuel Cell Senior Back Leverage Loans, required reserve accounts, the payment of \$5.0 million, interest on the Company would be required to prepay the lesser of any then outstanding amount of the December 2019 Subordinated Back Leverage Loan and subordinated project term loan actually advanced by Connecticut Green Bank.

In May 2023, \$1.8 million of the then-outstanding balance under the Green Bank Loan Agreement was paid off in full. The balance under the Green Bank Loan Agreement as of July 31, 2023 was \$3.0 million.

Holdco Borrower's operating expenses. Following the end of the quarter, "Interest Only Period," principal required to be made quarterly in quarterly level payments ("mortgage style") of principal and interest is the first to occur of 20 years following the Groton Project's commercial operations date and term of the Restated PPA. The maturity date of the Subordinated Back Leverage Loan Facility is currently contained in the Groton Project's commercial operations date and term of the Restated PPA, which is 2038. The "Interest Only Period" is the period beginning on the Closing Date and ending the first to occur of (i) the date the Senior Back Leverage Loan Facility has been fully repaid; or (ii) the date the Senior Back Leverage Loan Facility has been fully repaid. Each of the Senior Back Leverage Credit Agreement and the Subordinated Back Leverage Credit Agreement contains customary representations and warranties, including customary affirmative and negative covenants. The covenants are covenants that: (i) Holdco Borrower maintain a "Senior" debt service coverage ratio (which is computed taking into account debt service obligations on the Senior Back Leverage Loans) of not less than 1.20:1.00 (based on and tested every quarter) and a "Total" debt service coverage ratio (which is computed taking into account both the Senior Back Leverage Loans and the Subordinated Back Leverage Loan) of not less than 1.10:1.00 (based on trailing 12 months and tested on a quarterly basis); (ii) Holdco Borrower may make distributions or other payments to equity holders if certain debt to equity coverage ratios have been satisfied and Holdco Borrower is not in default under any of the Senior Back Leverage Credit Agreement or the Subordinated Back Leverage Credit Agreement, including the payment of required deposits into reserve accounts; (iii) Holdco Borrower is required to exercise its right to require the Groton Tax Equity Holdco limited liability company to acquire the Class A Interests from East West Bank, which is the period beginning on the "Flip Point" (which, pursuant to the Groton Tax Equity Holdco limited liability company agreement, is the date on which the holder of Class A Interests has realized a certain return on investment and, accordingly, the Class B Interests, has the right to purchase the Class A Interests); and (iv) the consent of the Groton Tax Equity Holdco limited liability company is required prior to Holdco Borrower's taking certain material actions under the Groton Tax Equity Holdco limited liability company agreement. Each of the Senior Back Leverage Credit Agreement were paid off, in full, and the Groton Tax Equity Holdco limited liability company agreement also contains customary representations and warranties and customary events of default.

entitle the Back Leverage Lenders to cause, the outstanding loans to become immediately due and payable in full in accordance with the terms of the Back Leverage Agreement. In the event of customary events of default for transactions of this kind, the events of default include if a Change of Control (as defined in the Back Leverage Agreement) occurs and the Holdco Borrower no longer directly or indirectly owns Holdco Borrower), a cross default (meaning that a default under the Back Leverage Agreement was terminated. Facility shall be deemed a default under the Subordinated Back Leverage Agreement.

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vice versa) or if CMEEC should become insolvent, is in bankruptcy or commits a specified number of principal payments to the Groton Project Company.

The Senior Back Leverage Loans may be prepaid at any time at the option of Holdco Borrower provided that (i) on or prior to the second anniversary of the Closing Date shall require a prepayment fee of 3% of the principal amount being prepaid; (ii) each prepayment after the second anniversary of the Closing Date but on or prior to the fourth anniversary shall require a prepayment fee of 2% of the principal amount being prepaid; and (iii) each prepayment after the fourth anniversary of the Closing Date but on or prior to the seventh anniversary of the Closing Date shall require a prepayment fee of 1% of the principal amount being prepaid. The Subordinated Back Leverage Loan may be prepaid at any time without prepayment fee.

State of Connecticut Loan

In November 2015, the Company closed on a definitive Assistance Agreement with the State of Connecticut ("Assistance Agreement") and received a disbursement of \$10.0 million, which was used for the first phase of the Torrington, Connecticut manufacturing facility. In conjunction with this financing, the Company executed a promissory note and related security agreements securing the loan with equipment liens and a mortgage on the facility location. Interest accrues at a fixed interest rate of 2.0%, and the loan is repayable over 15 years from the date on which occurred in November of 2015. Principal payments were deferred for four years from disbursement date, which was November 1, 2019. Under the Assistance Agreement, the Company was eligible for up to \$5.0 million in loan disbursements and created 165 full-time positions and retained 538 full-time positions for two consecutive years (as an example, the Company met the Employment Obligation) as measured on October 28, 2017 (as amended from time to time, the "Employment Obligation"). The Assistance Agreement was subsequently amended in April 2017 to extend the Target Date by two years to October 31, 2022.

In January 2019, the Company and the State of Connecticut entered into a Second Amendment to the Assistance Agreement ("Second Amendment"). The Second Amendment extended the Target Date to October 31, 2022 and modified the Employment Obligation to require the Company to continuously maintain a minimum of 538 full-time positions for two consecutive years (as an example, the Company met the Employment Obligation, as modified by the Second Amendment, and created an additional 165 full-time positions for the second consecutive year). The Second Amendment also provided that the Company would have received a credit in the amount of \$2.0 million to be applied against the outstanding balance of the loan. The Second Amendment also modified the provisions of the Assistance Agreement related to the second phase of the expansion project and the Company had not drawn any funds or received any disbursements under those provisions.

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\$2.0 million to be applied against the outstanding balance of the loan. The Second Amendment also modified the provisions of the Assistance Agreement related to the second phase of the expansion project and the Company had not drawn any funds or received any disbursements under those provisions.

In April 2023, the Company signed a Third Amendment to the Assistance Agreement (the "Third Amendment"). The Third Amendment was approved by the State of Connecticut Office of Attorney General on May 18, 2023. The Office of Attorney General released, and the Company received, the countersigned Third Amendment on the date the Third Amendment became effective. The Third Amendment further ~~extended~~ extended the Target Date by 24 consecutive months. The 24 consecutive months begin before October 31, 2024 and to maintain such positions for 24 consecutive months. The 24 consecutive months before the Target Date (as extended by the Third Amendment) that yields the highest annual average employment level to determine compliance with the ~~updated~~ amended Employment Obligation, provided that no portion of the Employment Obligation may begin before the date of the Third Amendment. The Third Amendment also requires the Company to conduct a "Job Audit" to the Commissioner of Economic and Community Development (the "Commissioner") regarding the 24-month period described above.

If, as a result of the Job Audit, the Commissioner determines that the Company has failed to meet the Employment Obligation (as amended by the Third Amendment), the Company will be required to immediately repay the amount outstanding fees, penalties or interest due, and then against the outstanding balance of the loan.

If, as a result of the Job Audit, the Commissioner determines that the Company has met the Employment Obligation and has created an additional 91 full-time employment positions, for a total of 629 full-time employment positions, the Company will receive a credit in the amount of \$2.0 million, which will be applied against the then-outstanding principal balance of the loan. If the application of such credit, the Commissioner will recalculate the monthly payments of principal and interest. The payments shall amortize the then remaining principal balance over the remaining term of the loan.

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In April of 2020, as a result of the COVID-19 pandemic, the State of Connecticut agreed to defer interest payments under the Assistance Agreement, beginning with the May 2020 payment. These deferrals ended at the end of the loan, thus extending out the maturity date by three months.

Restricted Cash

As of ~~July 31, 2023~~ January 31, 2024, we have pledged approximately ~~\$32.7 million~~ \$51.3 million of cash as performance security and for letters of credit for certain banking requirements and contracts. As of ~~July 31, 2023~~ January 31, 2024, outstanding letters of credit totaled ~~\$7.3 million~~ \$14.2 million. These expire on various dates through ~~2029~~ 2029. Under the terms of certain contracts, we will provide performance security for future contract cash balance as of ~~July 31, 2023~~ January 31, 2024 also included \$2.9 million primarily to support purchase and service agreements related to Crestmark sale-leaseback transactions, \$9.0 million associated with the Senior Back Leverage Loan Facility and \$20.0 million the Subordinated Back Leverage Facility. Refer to Note 11 to the Company's Financial Statements for the nine months ended July 31, 2023 included in this Quarterly Report on Form 10-Q for a discussion of the Company's restricted cash balance.

Power purchase agreements

Under the terms of our PPAs, customers agree to purchase power or other value streams delivered such as electricity and/or carbon from the Company's fuel cell power platforms at negotiated rates. Electricity rates are based on customers' current and estimated future electricity pricing available from the grid. We are responsible for maintaining, monitoring and repairing our fuel cell power platforms. Under certain agreements, the Company is responsible for

procuring fuel, generally natural gas or biogas, to run our fuel cell power platforms. In addition, under the PPA, we are required to produce minimum amounts of power under our PPAs and we have the right to terminate PPA if the customer, subject to certain exit costs. As of **July 31, 2023** **January 31, 2024**, our generation output (which includes 7.4 MW attributed to the design rated output of the Groton Project although the Groton Project has operated below its rated capacity at an output of approximately 6.0 MW since commencement of commercial operation) is approximately 10.0 GWh.

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Service and warranty agreements

We warranty our products for a specific period of time against manufacturing or performance defect. The warranty period is generally 15 months after shipment or 12 months after acceptance of the product. In addition, we have contracted with certain customers to provide services to ensure the power plants remain in good working order for terms of up to 20 years. Pricing for service contracts is based upon estimates of future costs, which are determined from actual expenses. Refer to "Critical Accounting Policies and Estimates" for additional details.

Advanced Technologies contracts

We have contracted with various government agencies and certain companies from private industry for development as either a prime contractor or sub-contractor under multi-year, cost-reimbursement and cooperative agreements. Cost-share terms require that participating contractors share the total costs in an agreed upon ratio. In many cases, we are reimbursed only a portion of the costs incurred or to be incurred. Government research and development contracts may extend for many years, funding is often provided on a year basis if contract terms are met and Congress authorizes the funds. As of **July 31, 2023**, Advanced Technologies contract backlog totaled **\$11.6 million** **\$23.4 million**, of which **\$6.5 million** **\$19.7 million** is U.S. Government-funded and **\$3.9 million** **\$3.7 million** is U.S. Government-funded and **\$1.2 million** is U.S. Government-unfunded.

Off-Balance Sheet Arrangements

We have no off-balance sheet debt or similar obligations, which are not classified as debt. We do not have any off-balance sheet arrangements. See Note 17, "Commitments and Contingencies" to our Consolidated Financial Statements for the three months ended **July 31, 2023** **January 31, 2024** included in this Quarterly Report on Form 10-Q for further information.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The preparation of financial statements and related disclosures in conformity with U.S. GAAP requires estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses and contingent assets and liabilities. Estimates are used in accounting for, among other things, revenue

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recognition, lease right-of-use assets and liabilities, loss accruals on service agreements, excess inventories, product warranty accruals, loss accruals on service agreements, share-based compensation

doubtful accounts, depreciation and amortization, impairment of goodwill and in-process research assets, impairment of long-lived assets (including project assets), lease liabilities and right-of-use assets and contingencies. Estimates and assumptions are reviewed periodically, and the effects of such changes in consolidated financial statements in the period they are determined to be necessary. Due to the inaccuracy of these estimates, actual results in future periods may differ from those estimates.

Our critical accounting policies are those that are both most important to our financial condition and require the most difficult, subjective or complex judgments on the part of management in their application, or make estimates about the effect of matters that are inherently uncertain. For a complete description of those accounting policies that affect our more significant judgments and estimates used in the preparation of our condensed consolidated financial statements, refer to our Annual Report on Form 10-K for the year ended **October 31, 2022** **October 31, 2023** filed with the SEC.

ACCOUNTING GUIDANCE UPDATE

See Note 2, "Recent Accounting Pronouncements," to our Consolidated Financial Statements included in Form 10-Q for a summary of recently adopted accounting guidance.

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Interest Rate Exposure Risk

We have invested in U.S. Treasury Securities with maturities ranging from more than three months to 10 years. We hold these investments until maturity and accordingly, these investments are carried at cost and revalued at fair value on a quarterly basis. At July 31, 2023, our U.S. Treasury Securities had a carrying value of \$77.4 million, which approximated fair value.

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approximated fair value. These investments have maturity dates ranging from **August 2023** to **October 2024**, with an average yield to maturity of 5.09%.

Cash is invested overnight with high credit quality financial institutions and therefore we are not exposed to interest rate risk from holding cash. Based on our overall interest rate exposure as of **July 31, 2023**, we do not expect significant changes in interest rates to have a material impact on our interest rate sensitive instruments, a change in interest rates of 1% would not have a material impact on our cash position.

Foreign Currency Exchange Risk

As of **July 31, 2023** **January 31, 2024**, approximately 0.6% 0.5% of our total cash and cash equivalents are denominated in U.S. dollars (primarily the Euro, Canadian dollars and Korean Won) and we have no plans of repatriating cash from these countries. We do not currently have any foreign currency hedging activities. The economic impact of currency exchange rate movements on our cash position is difficult to predict because such changes are often linked to variability in real growth, inflation, interest rates, government spending and other economic factors. These changes, if material, may cause us to adjust our financing and operating strategies.

Derivative Fair Value Exposure Risk

Interest Rate Swap

On May 16, 2019, an interest rate swap agreement (the "Swap Agreement") was entered into with the BFC Credit Agreement for the term of the loan. The net interest rate across the BFC Credit Agreement transaction resulted in a fixed rate of 5.09%. The interest rate swap was adjusted to fair value on a quarterly basis. The fair value was based on Level 2 inputs including primarily the forward LIBOR curve available to us. The methodology involved comparison of (i) the sum of the present value of all monthly variable rate payments.

using the forward LIBOR curve and (ii) the sum of the present value of all monthly fixed rate payments was equivalent to the outstanding principal amount of the loan. On August 1, 2022, the Company entered into an interest rate swap agreement that replaced LIBOR with Term Secured Overnight Financing Rate ("SOI"). The fair value adjustments for the three months ended July 31, 2023 and 2022 resulted in a gain of \$36.0 thousand, respectively, and for the nine months ended July 31, 2023 and 2022 resulted in a loss of \$0.6 million, respectively. The Swap Agreement was terminated during the three months ended July 31, 2023, as part of the payoff of the senior and subordinated indebtedness of the Company to Liberty Bank, Fifth Third Bank and related to the Bridgeport Fuel Cell Project.

On May 19, 2023, in connection with the closing of the OpCo Financing Facility, the Company entered into a Financing Agreement (the "Investec Master Agreement") and an ISDA Schedule to the 2002 Master Agreement with Investec Bank plc as a hedge provider, and an ISDA 2002 Master Agreement (the "BMO Master Agreement") to the 2002 Master Agreement (the "BMO Schedule") with Bank of Montreal (Chicago Branch) as a counterparty. On May 19, 2023, OpCo Borrower executed the related trade confirmations for these interest rate swap agreements to protect against adverse price movements in the floating SOFR rate associated with 100% of the principal amount of the Term Loan outstanding. Pursuant to the terms of such agreements, OpCo Borrower will pay a fixed interest rate of 6.366% on the Term Loan thereafter. The obligations of OpCo Borrower to the hedge providers under the interest rate swap agreements are secured by the obligations under the Financing Agreement and, accordingly, are secured, on a pari passu basis, by the obligations of OpCo Borrower under the Financing Agreement. The Company has not elected hedge accounting. As a result, the derivative will be remeasured to fair value quarterly with the resulting gains/losses recorded in the income statement. The fair value adjustments adjustment for the three and nine months quarter ended July 31, 2023 is a gain of \$0.5 million. During the three months ended January 31, 2024, SOFR swap rates increased by 35 basis points.

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Project Fuel Price Exposure Risk

Certain of our PPAs for project assets in our generation operating portfolio and project assets under fluctuating fuel price risks as well as the risk of being unable to procure the required amounts of fuel from available fuel sources. We seek to mitigate our fuel risk using strategies including: (i) fuel cost reimbursement PPAs to allow for pass through of fuel costs (full or partial) where possible, which we have done with

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our 14.9 MW operating project in Bridgeport, CT; (ii) procuring fuel under fixed price physical supply contracts with fuel suppliers and fuel brokers and fuel hedging with fuel price risk management counterparties, which we have done for twenty years for our Tulare BioMAT project, the initial seven years of our LIPA Yaphank Project, the initial two years of our MW Derby project, Projects (through September 2028), six years of the twenty year agreement for our Toyota project; project (through May of 2025); and (iii) potentially entering into

investment grade counterparties to offset potential negative market fluctuations. The Company does not have a formal hedging program, but uses natural gas or other commodity pricing and seeks commercially available means to reduce commodity risk.

There are currently three projects in development with fuel sourcing risk, which are the Toyota project, RNG, and our Derby, CT 14.0 MW and 2.8 MW projects, both of which require natural gas for fuel. The Company will look to extend the duration of these contracts should market and credit conditions permit. Mitigation strategies for the 2.8 MW project in Derby, CT are being assessed and will be implemented as soon as possible. Such strategies may require cash collateral or reserves to secure fuel or related contracts. If the Company is unable to secure fuel on favorable economic terms, it may result in impairment charges to the Derby project asset. The Company has recorded fuel charges for the Toyota project asset.

Historically, this risk has not been material to our financial statements as our operating projects prior to 2023 either did not have fuel price risk exposure, had fuel cost reimbursement mechanisms in our contracts, or had established long term fixed price fuel physical contracts. In the event of a significant assessment of the fuel price risk arising from price movements of natural gas, the Company performs a sensitivity analysis to determine the impact a change in natural gas commodity pricing would have on our Consolidated Statement of Operations and Comprehensive Loss (assuming that all projects with fuel price risk were operating). A \$1/MMBTu ("MMBTu") increase in market pricing compared to our underlying project models would result in a \$200,000 to \$26,000 increase in our Consolidated Statement of Operations and Comprehensive Loss on an annual basis. The Company has conducted a sensitivity analysis on the impact of RNG pricing and a \$10/MMBTu increase in market pricing compared to our underlying project models would result in an impact of approximately \$2.0 million to our Consolidated Statement of Operations and Comprehensive Loss on an annual basis.

The Company recorded a derivative gain during the year ended October 31, 2023 of \$4.1 million as a result of natural gas purchases under a previous normal purchase normal sale contract designation, which are accounted for under market accounting. The Company recorded a derivative loss for the three months ended January 31, 2024 of \$2.0 million as a result of natural gas purchases under a previous normal purchase normal sale contract designation, which are accounted for under market accounting.

Item 4. CONTROLS AND PROCEDURES

The Company maintains disclosure controls and procedures, which are designed to provide reasonable assurance that the 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 the Company's 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, 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 concluded that the Company's disclosure controls and procedures were effective as of the end of the period covered by this report, providing 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 period covered by this report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

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PART II. OTHER INFORMATION

Item 1. **LEGAL PROCEEDINGS**

From time to time, the Company is involved in legal proceedings, including, but not limited to, re mediations, arbitrations and litigation, arising out of the ordinary course of its business ("Legal Proceee cannot assure the outcome of such Legal Proceedings, management presently believes that the resi either individually, or in the aggregate, will not have a material adverse effect on the Company's con and no material amounts have been accrued in the Company's consolidated financial statements with

Item 1A. **RISK FACTORS**

Part I, Item 1A, "Risk Factors" of our most recently filed Annual Report on Form 10-K for the fi **2022** **October 31, 2023**, filed with the Securities and Exchange Commission on **December 20, 2** "2022 **2023 Annual Report**", sets forth information relating to important risks and uncertainties that co our business, financial condition and operating results. Those risk factors continue to be releva business, financial condition and operating results and, accordingly, you should review and consider s investment decision with respect to our securities. The following risk factor is being provided There h to supplement and update the risk factors set forth in Part I, Item 1A, "Risk Factors" of the 2022 Annual

We have a limited number of shares of common stock available for issuance, which may limit o

We have historically relied on the equity markets to raise capital to fund our business and operations only 55,295,919 shares of common stock available for issuance, of which 54,655,306 shares were vesting or exercise of equity awards and options, under our employee stock purchase and equity inc the-market offering program. At our 2023 annual meeting of stockholders, our stockholders did not ap the number of shares of common stock that we are authorized to issue from 500,000,000 shares Company has filed a definitive proxy statement calling a special meeting of stockholders to be held C Meeting"). At the Special Meeting, our stockholders will again vote on the proposal to increase the stock that we are authorized to issue from 500,000,000 shares to 1,000,000,000 shares. There c proposal will be approved by our stockholders. If this proposal is not approved, the limited number of may limit our ability to raise capital previously disclosed in the equity markets and satisfy obligations which could adversely impact our ability to fund our business and operations. **2023 Annual Report**.

Item 2. **UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

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

The following table sets forth information with respect to purchases made by us or on our behalf of periods indicated:

Period	Total		Average	
	Number of	Shares	Total N	of Sh
	Purchased			Purcha
(1)				
	Total	Number of	Average	Pub
	Shares	Price Paid	Per Share	Pub
Period	Purchased (1)	per Share	Prog	
May November				
1, 2023 - May				
31,				
2023 November				
30, 2023	— 291,604	\$ — 1.17		

June	December
1, 2023 - June	
30,	
2023	December
31, 2023	2,357 521,124 2.20 1.28
July	January 1,
2023	2024 -
July	31,
2023	January
31, 2024	4,964 2.07
Total	7,321 812,728 \$2.11 1.24

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(1) Includes only shares that were surrendered by employees to satisfy statutory tax withholding obligations in connection with the vesting of stock-based compensation awards.

Item 3. DEFAULT UPON SENIOR SECURITIES

None.

Item 4. MINE SAFETY DISCLOSURES

None.

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Item 5. OTHER INFORMATION

(c) Director and Section 16 Officer Rule 10b5-1 Trading Arrangements

On January 8, 2024, Michael S. Bishop, Executive Vice President, Chief Financial Officer and Treasurer, entered into a Rule 10b5-1 plan ("Rule 10b5-1 Plan") for the three months ended July 31, 2023, no Company. The Rule 10b5-1 Plan was entered into during an open trading window in accordance with the Company's policies and procedures for trading Company securities and to satisfy the affirmative defense conditions of Rule 10b5-1(c) under the Securities Exchange Act of 1934, as amended.

amended. Mr. Bishop's Rule 10b5-1 Plan provides for the sale of up to 64,853 shares of the Company's common stock, pursuant to the terms of the Rule 10b5-1 Plan. The Rule 10b5-1 Plan expires on January 7, 2025 or earlier completion of all authorized transactions under such Rule 10b5-1 Plan.

No other director or Section 16 officer of the Company has adopted or terminated a "Rule 10b5-1 arrangement" or "non-Rule 10b5-1 trading arrangement" as each term is defined in Item 408(a) of Regulation FD during the three months ended January 31, 2024.

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Item 6. EXHIBITS

Exhibit No.	Description
3.1	Certificate of Incorporation of the Company, as amended, July 12, 1999 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K dated September 21, 1999).
3.2	Certificate of Amendment of the Certificate of Incorporation of the Company, dated November 21, 2000 (incorporated by reference to Exhibit 3.3 to the Company's Annual Report on Form 10-K dated January 12, 2017).
3.3	Certificate of Amendment of the Certificate of Incorporation of the Company, dated October 31, 2003 (incorporated by reference to Exhibit 3.11 to the Company's Current Report on Form 8-K dated November 3, 2003).

	3.4	<u>Certificate of Designation for the Company's 5% Series B Cumulative Convertible Perpetual Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company's Current Report Form 8-K, dated November 22, 2004).</u>
	3.5	<u>Amended Certificate of Designation of 5% Series B Cumulative Convertible Perpetual Preferred Stock, dated March 14, 2005 (incorporated by reference to Exhibit 3.4 to the Company's Annual Report on Form 10-K dated January 12, 2017).</u>
	3.6	<u>Certificate of Amendment of the Certificate of Incorporation of the Company, dated April 8, 2011 (incorporated by reference to Exhibit 3.5 to the Company's Annual Report on Form 10-K dated January 12, 2017).</u>
	3.7	<u>Certificate of Amendment of the Certificate of Incorporation of the Company, dated April 5, 2012 (incorporated by reference to Exhibit 3.6 to the Company's Annual Report on Form 10-K dated January 12, 2017).</u>
	3.8	<u>Certificate of Amendment of the Certificate of Incorporation of the Company, dated December 3, 2015 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K dated December 3, 2015).</u>
	3.9	<u>Certificate of Amendment of the Certificate of Incorporation of the Company, dated April 18, 2016 (incorporated by reference to Exhibit 3.9 to the Company's Quarterly Report on Form 10-Q for the period ending July 31, 2016).</u>

	3.10	<u>Certificate of Amendment of the Certificate of Incorporation of the Company, dated April 7, 2017 (incorporated by reference to Exhibit 3.10 to the Company's Quarterly Report on Form 10-Q for the period ending July 31, 2017).</u>
	3.11	<u>Certificate of Designations for the Company's Series C Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, dated September 5, 2017).</u>
	3.12	<u>Certificate of Amendment of the Certificate of Incorporation of the Company, dated December 14, 2017 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K dated December 14, 2017).</u>
	3.13	<u>Certificate of Designations, Preferences and Rights for the Company's Series D Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K dated August 27, 2018).</u>
	3.14	<u>Certificate of Amendment of the Certificate of Incorporation of FuelCell Energy, Inc., dated May 8, 2019 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on May 8, 2019).</u>
	3.15	<u>Certificate of Amendment of the Certificate of Incorporation of FuelCell Energy, Inc., dated May 11, 2020 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on May 12, 2020).</u>

	3.16	<u>Certificate of Amendment of the Certificate of Incorporation of FuelCell Energy, Inc. dated April 8, 2021 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K/A filed on April 14, 2021).</u>
	3.17	<u>Certificate of Amendment of the Certificate of Incorporation of FuelCell Energy, Inc., dated October 11, 2023 (incorporated by reference to Exhibit 3.1 to the Company Current Report on Form 8-K filed on October 11, 2023).</u>
	3.18	<u>Second Amended and Restated By-Laws of the Company, effective as of July 17, 2023 February 22, 2024 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on July 18, 2023), February 22, 2024).</u>
	4.1	<u>Specimen of Common Share Certificate (incorporated by reference to Exhibit 4 to the Company's Annual Report on Form 10-K for fiscal year ended October 31, 1999).</u>
	10.1	<u>Letter Agreement between ExxonMobil and Engie dated 2023 (incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed on August 20, 2023).</u>

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Exhibit No.	Description
10.2 10.1	Amendment No. 1 to Credit Agreement , dated as of October 23, 2023, between Connecticut Green Bank (as administrative agent and lender party) and FuelCell Energy, Inc. 2018 Employee Stock Purchase Plan, as amended and restated effective as of May 22, 2023. Finance HoldCo, LLC (incorporated by reference to Exhibit 10.1 10.88 to the Company's Current Report Form 10-K filed on Form 8-K dated May 22, 2023 December 19, 2023).
10.3 10.2	* Form of FuelCell Energy, Inc. Third Amended and Restated 2018 Omnibus Incentive Plan effective as of May 22, 2023 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K dated May 22, 2023).

	10.4	Financing Per Share Agreement da 19, 2023, b FuelCell Energ Finance 1, b Borrower), the party thereto, Issuing Bank thereto, and Bank plc Administrative and Collateral (Relative t Contingent (incorporated reference to 10.1 to the C Current Rep Form 8-K filed 2023 Decemb 2023). Omnibus G Pledge and Agreement, d 19, 2023, n FuelCell Finance, LI Pledgor), Energy_Opco 1, LLC (as B and Bridgep Cell, LLC, G Cell 1, LLC, Fuel Cell, SR SRJFC, LLC, YT HoldCo, J New Renewable LLC (as S Guarantors) in Investec Bank Collateral (incorporated reference to 10.2 to the C Current Rep Form 8-K filed 2023).
	10.5	Omnibus G Pledge and Agreement, d 19, 2023, n FuelCell Finance, LI Pledgor), Energy_Opco 1, LLC (as B and Bridgep Cell, LLC, G Cell 1, LLC, Fuel Cell, SR SRJFC, LLC, YT HoldCo, J New Renewable LLC (as S Guarantors) in Investec Bank Collateral (incorporated reference to 10.2 to the C Current Rep Form 8-K filed 2023).

	10.6	Depository Ac dated May 1 by _____ and FuelCell Energ Finance 1. Borrower). Bank plc (as Agent Administrative and Liberty Fin Depository (incorporated reference to 10.3 to the Co Current Rep Form 8-K filed 2023).
	10.7	ISDA 2002 Agreement, d 19. 2023. Investec Ban FuelCell Energ Finance 1. (incorporated reference to 10.4 to the Co Current Rep Form 8-K filed 2023).
	10.8	ISDA Schedu 2002 Agreement, d 19. 2023. Investec Ban FuelCell Energ Finance 1. (incorporated reference to 10.5 to the Co Current Rep Form 8-K filed 2023).
	10.9	ISDA 2002 Agreement, d 19. 2023. Bank of Mon FuelCell Energ Finance 1. (incorporated reference to 10.6 to the Co Current Rep Form 8-K filed 2023).

	10.10	ISDA Schedule 2002 Agreement, dated 19, 2023, between Bank of Montreal and FuelCell Energy, Inc. Finance 1, Inc. (incorporated by reference to 10.7 to the Current Report on Form 8-K filed on May 19, 2023).
	10.11	Third Amendment to the Assistance Agreement, dated by and between the State of Connecticut and the FuelCell Energy, Inc. subsidiary, effective May 19, 2023 (incorporated by reference to 10.1 to the Current Report on Form 8-K filed on May 19, 2023).

10.12	Amendment No. <u>12</u> to Financing Agreement, dated as of <u>August 11, 2023</u> January 2, 2024, among FuelCell Energy, Opco Finance 1, LLC (as Borrower), Investec Bank plc (as Administrative Agent and Lender), Liberty Bank (as Lender), Bank of Montreal (as Lender), Amalgamated Bank (as Lender), and Connecticut Green Bank (as Lender) (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed August 17, 2023).
10.13	Credit Agreement dated August 11, 2023, among FuelCell Energy, Holdco, LLC (as Borrower), Bank of Montreal (as Administrative Agent and Lead Arranger), and the Lenders thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed August 24, 2023).

	10.14	Credit Ag dated August among Energy Holdco, LL Borrower). Co Green Bar Administrative and the Lend thereto (inc by reference to 10.2 to the Co Current Rep Form 8-K file 24, 2023).
	10.15	Security Ac dated August by FuelCell Finance Hold for the be Liberty (incorporated reference to 10.3 to the Co Current Rep Form 8-K file 24, 2023).
	10.16	Pledge and Agreement, August 18, 2 FuelCell Finance Hold for the be Liberty (incorporated reference to 10.4 to the Co Current Rep Form 8-K file 24, 2023).

	10.17	<p><u>Deposit</u> <u>Security_</u> and <u>Agreement,</u> <u>August 18,</u> <u>among</u> <u>Energy</u> <u>Holdco, LLC</u> <u>Station Fuel C</u> <u>and Liberty</u> <u>(incorporated</u> <u>reference to</u> <u>10.5 to the C</u> <u>Current Rep</u> <u>Form 8-K file</u> <u>24, 2023).</u></p>
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Exhibit No.		
	10.18	<p><u>Secu</u> <u>Agree</u> <u>dated</u> <u>18,</u> <u>FuelC</u> <u>Finan</u> <u>LLC</u> <u>benef</u> <u>Conn</u> <u>Gre</u> <u>(inc</u> <u>refere</u> <u>Exhib</u> <u>the C</u> <u>Curre</u> <u>on F</u> <u>filed</u> <u>2023)</u></p>

	10.19	Pledge Secu Agree dated 18. FuelC Finan LLC benef Conn Greer (incor refere Exhib the Curre on filed 2023)
	10.20	Depo: Secu Pledge Agree dated 18. amon Energ Holdc Groto Fuel and C Greer (incor refere Exhib the Curre on filed 2023)

	10.21	Subo Agree dated 18. amon Conn Gre Libert and_1 Lende theret (incor refere Exhib the_0 Curre on_1 filed_1 2023) Interp Agree dated 18. amon West FuelC Finan LLC, Amalg Bank, Bank, Conn Gre (incor refere Exhib the_0 Curre on_1 filed_1 2023)
	10.22	Subo Agree dated 18. amon West FuelC Finan LLC, Amalg Bank, Bank, Conn Gre (incor refere Exhib the_0 Curre on_1 filed_1 2023) Interp Agree dated 18. amon West FuelC Finan LLC, Amalg Bank, Bank, Conn Gre (incor refere Exhib the_0 Curre on_1 filed_1 2023)

	10.23	Limit Guara Subo Agree dated 18. FuelC Inc. benef Libert (incor refere Exhib the Curre on filed 2023)
	10.24	Limit Guara Subo Agree dated 18. FuelC Inc. benef Conn Greer (incor refere Exhib the Curre on filed 2023)

	10.25	Amen 4 Devel Agree betwe FuelC Inc. Exxon Techn Engin Comp execu Augu and e of A 2023 (incor refer Exhib the C Curre on F filed 2023 2024)
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
32.2		Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

	101.INS	101.INS#	Inline	XBRL
			Instance	
			Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.	
	101.SCH	101.SCH#	Inline	XBRL
			Schema Document	
	101.CAL	101.CAL#	Inline	XBRL
			Calculation	
			Linkbase Document	
	101.DEF	101.DEF#	XBRL	Definition
			Linkbase Document	
	101.LAB	101.LAB#	Inline	XBRL Labels
			Linkbase Document	
	101.PRE	101.PRE#	Inline	XBRL
			Presentation	
			Linkbase Document	
104			Cover	
			Page	Interactive
			Data File (formatted as Inline XBRL and contained in Exhibit 101).	
		*	Management Contract or Compensation Arrangement	
		#	Filed with this Annual Report on Form 10-K, the following documents formatted in iXBRL are included: (i) the Consolidated Balance Sheets as of January 31, 2024 and October 31, 2023, (ii) the Consolidated Statements of Operations and Comprehensive Income for the three months ended January 31, 2024 and 2023, (iii) the Consolidated Statements of Changes in Equity for the three months ended January 31, 2024 and 2023, (iv) the Consolidated Statements of Cash Flows for the three months ended January 31, 2024 and 2023, (v) Notes to the Consolidated Financial Statements and (vi) the information included in Part II, Item 5(c).	
				6947

SIGNATURE

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

FUELCELL ENERGY, INC.
(Registrant)

September

11,

2023 March

7, 2024

Date

/s/ Michael S. Bish
Michael S. Bish
Executive Vice President
Chief Financial Officer
Treasurer
(Principal Financial Officer
and Principal Accounting Officer)

7048

CERTIFICATION

I, Jason B. Few, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended March 31, 2023, of FuelCell Energy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which the statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements and other financial information included in this report fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and the design of internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) as of the end of the period covered by this report and have:

- (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under their supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known by others within those entities, particularly in the period in which this report is being filed;
- (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting for external purposes in accordance with generally accepted accounting principles;
- (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusion about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
- (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's most recent fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and the design of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):

- (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summate and report financial information; and
- (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

September 11, 2023 March 7,

2024

/s/ Jason B. Few

Jason B. Few

President and Chief Executive Officer

(Principal Executive Officer)

CERTIFICATION

I, Michael S. Bishop, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended December 31, 2023, of FuelCell Energy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
3. Based on my knowledge, the financial statements included in this report fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) as of the end of the period covered by this report and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including consolidated subsidiaries, is made known by others within those entities, during the period in which this report is prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the disclosure controls and procedures presented in this report and concluded that the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation.

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the most recent fiscal quarter (the registrant's most recent fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer, if any, disclosed, based on our most recent evaluation, any significant deficiency in the design or operation of internal control over financial reporting which could render the registrant's auditors and the audit committee ineffective in fulfilling their responsibilities to the registrant's board of directors (or persons performing the equivalent function):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who played a significant role in the registrant's internal control over financial reporting.

September 11, 2023 March 7,

2024

/s/ Michael S. Bishop

Michael S. Bishop

Executive Vice President

Financial Officer and

(Principle Financial

Principle Accounting

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

In connection with the quarterly report of FuelCell Energy, Inc. (the "Company") on Form 10-Q for the quarter ended **January 31, 2024** as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jason B. Few, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, that the Report fully complies with the requirements of § 13(a) of the Sarbanes-Oxley Act of 2002 and that I have signed the Report with the knowledge that it will be filed with the Securities and Exchange Commission.

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m) and
- (2) The information contained in the Report presents, in all material respects, the financial condition and results of operations of the Company.

September 11, 2023 March 7, 2024

/s/ Jason B. Few
Jason B. Few
President and Chief Executive Officer
(Principal Executive Officer)

A signed original of this written statement has been furnished to the Company and will be retained by the Company and will be furnished to the SEC or its staff upon request.

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

In connection with the quarterly report of FuelCell Energy, Inc. (the "Company") on Form 10-Q for the quarter ended **January 31, 2024** as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Michael S. Bishop, Executive Vice President, Chief Financial Officer and Treasurer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m) and
- (2) The information contained in the Report presents, in all material respects, the financial condition and results of operations of the Company.

September 11, 2023 March 7, 2024

/s/ Michael S. Bishop
Michael S. Bishop
Executive Vice President
Chief Financial Officer and Treasurer
(Principal Financial Officer)
Principal Accounting Officer

A signed original of this written statement has been furnished to the Company and will be retained by the Company and will be furnished to the SEC or its staff upon request.

DISCLAIMER

THE INFORMATION CONTAINED IN THE REFINITIV CORPORATE DISCLOSURES DELTA REPORT™ IS A COMPARISON OF TWO FINANCIALS PERIODS REPORTS. THERE MAY BE MATERIAL ERRORS, OMISSIONS, OR INACCURACIES IN THE REPORT INCLUDING THE FORM AND THE COMPARISON DATA AND TABLES. IN NO WAY DOES REFINITIV OR THE APPLICABLE COMPANY ASSUME ANY RESPONSIBILITY FOR ANY INVESTMENT OR OTHER DECISIONS MADE BASED UPON THE INFORMATION PROVIDED IN THIS REPORT. USERS ARE ADVISED TO REVIEW THE APPLICABLE COMPANY'S ACTUAL SEC FILINGS BEFORE MAKING INVESTMENT OR OTHER DECISIONS.

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