



November 4, 2013

Ms. Elizabeth M. Murphy  
Secretary, U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Comment Letter on Pay Ratio Disclosure (File No. S7-07-13)

Dear Ms. Murphy:

On behalf of FuelCell Energy, Inc., a company listed on the NASDAQ exchange (ticker: FCEL), I am writing to comment on the U.S. Securities and Exchange Commission's proposed rule to implement Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. My company is one of the more than 3,800 U.S. issuers that would be required to prepare this new pay ratio disclosure.

While we appreciate the Commission's intent to draft a rule that would provide more flexibility to issuers, we believe that the SEC can do more to reduce the rule's enormous compliance burdens while ensuring that investors receive accurate and useful information.

*We expect that our costs of complying with the proposed rule will far exceed the benefits that our investors would receive.* Our company and its subsidiaries now employ 645 full-time employees in 4 countries. While we do not yet know our full costs of compliance, we estimate that we would have to spend thousands of dollars to hire a dedicated resource and overhaul our payroll and human resource information system in order to prepare our first pay ratio disclosures under this rule.

*This disclosure mandate should be limited to full-time, U.S.-based employees.* We believe that the SEC should not require companies to include overseas or part-time or temporary employees in calculating their pay ratios. Such an interpretation would greatly reduce the compliance costs for companies like ours, which has 45 non-U.S. employees and 36 part-time or temporary workers. Like many issuers, we do not have a global payroll data system that includes all our employees, and thus, we expect that this data-collection exercise will require extensive manual calculations, significant staff hours, and hard-to-quantify costs. To produce this disclosure, we also will need to navigate through more restrictive data privacy laws in other nations and account for foreign currency fluctuations and differences in local benefit practices.

*Statistical sampling won't significantly reduce our costs of compliance.* While we appreciate that the SEC is willing to permit sampling and reasonable estimates, our

company still would face an enormous task to gather all the global data we would need to perform statistically valid sampling.

In addition, we are concerned that other companies will use varying techniques to gather this data, and that these different approaches may lead to inconsistent results, which would undermine the usefulness of these disclosures for investors.

*Companies would be subject to unfair peer comparisons.* We also are concerned that our company will be unfairly compared to industry peers that have fewer non-U.S. or part-time employees or which rely more heavily on contract workers. Many investors, especially retail shareholders, may make proxy voting decisions based on these pay ratio comparisons without fully understanding how our company's business practice differences affect these numbers. To ensure fair "apples-to-apples" comparisons with other companies, the SEC should limit pay ratio calculations to full-time, U.S.-based employees.

*This pay ratio disclosure won't be helpful to most of our investors.* Our investors already receive a significant amount of information on our executive compensation practices through our proxy materials. Since the arrival of mandatory Say-on-Pay votes in 2011, we have expanded our efforts to ensure that we address investor concerns about our compensation programs. Most of our investors focus their attention on the pay-for-performance incentives for Named Executive Officers and have not asked for information on the pay received by rank-and-file employees. However, we expect that this new mandate may encourage some retail investors to base their Say-on-Pay votes solely on a single pay ratio number and not take the time to understand our company's compensation strategy. We ask the SEC to undertake an educational effort to help retail investors understand the limits of these new disclosures.

*The SEC should delay compliance with the most onerous parts of this rule.* As we explained earlier in this letter, we expect that the data collection required by the proposed rule will be time-consuming and enormously costly for our company. Assuming that this rule takes effect in 2014, we still expect that many companies, including ours, will have trouble gathering and analyzing all their fiscal 2015 pay data before their next annual reports are due. If the Commission does not decide to exempt non-U.S. employees from this mandate, we ask the SEC to provide an additional two years before companies must include overseas workers in their pay ratio calculations. A two-year delay would give companies more time to refine their data collection and statistical sampling methods on a smaller pool of full-time U.S. workers. Companies also would have more time to upgrade their payroll systems around the world so that they can more easily generate this data each year. In its final "conflict minerals" rule, the Commission wisely provided a two-year grace period to help companies that cannot determine the sourcing of all the minerals in their supply chains; the SEC should provide similar relief in this case.



FuelCell Energy

Ultra-Clean, Efficient, Reliable Power

Thank you for the opportunity to comment on this important issue. If we can provide any additional information that would be useful to the Commission or the staff in this matter, please contact me at (203) 825-6000.

Very truly yours,

Michael Bishop  
Sr. Vice President, Chief Financial Officer