



FuelCell Energy

FUELCELL ENERGY, INC.

Audit and Finance Committee Charter

Purpose

The purpose of the Audit and Finance Committee (the “Committee”), in its capacity as a committee of the Board of Directors, is to oversee (i) management’s conduct of the Company’s financial reporting process, including reviewing the financial reports and other financial information provided by the Company and the Company’s systems of internal accounting and financial controls, (ii) the Company’s independent auditors’ qualifications and independence and the audit and non-audit services provided to the Company, (iii) the performance of the Company’s independent auditors (iv) the Company’s financing proposals and to refer to the Board for vote when appropriate, (v) the Company’s analysis and mitigation strategies for enterprise risk, reporting any findings or recommendations to the Board of Directors.

Membership

The Committee shall be comprised of not less than three members of the Board, and the Committee’s composition shall meet the requirements of applicable Nasdaq rules (including Rules 4200(a)(15) and 4350(d)) and Section 301 of the Sarbanes-Oxley Act of 2002 (the “S-O Act”) and Securities and Exchange Commission (“SEC”) rules promulgated thereunder (including Exchange Act Rule 10A-3). Accordingly, all members of the Committee will be independent directors (as independence is defined under Nasdaq Rule 4350(d)(2)(A)(i) and under Exchange Act Rule 10A-3(b)(1)); all members of the Committee will be able to read and understand fundamental financial statements (including balance sheets, income statements and cash flow statements); no member of the Committee shall have participated in the preparation of the financial statements of the Company or any current subsidiary of the Company at any time during the past three years; and at least one member of the Committee will meet the financial sophistication requirements set forth in Nasdaq Rule 4350(d)(2)(A)(i). It is also expected that at least one member of the Committee will be an “audit committee financial expert,” as that term is defined in Item 410(h) of SEC Regulation S-K.

Key Responsibilities

The Committee's job is one of oversight and it recognizes that the Company’s management is responsible for preparing the Company’s financial statements and that the independent auditors are responsible for auditing those financial statements to confirm that they present fairly in all material respects and are prepared in accordance with generally accepted accounting principles (“GAAP”). Additionally, the Committee recognizes that financial management and the independent auditors have more time and knowledge and more detailed information about the Company than do Committee members; consequently, in carrying out its oversight responsibilities, the Committee is not providing any expert or special assurance as to the Company’s financial statements or any professional certification as to the independent auditors’ work.

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In carrying out its oversight role, the Committee shall perform the following functions, which may be varied from time to time as appropriate under the circumstances:

Independent Auditors and Audit Process

- The Committee shall have the ultimate authority and responsibility to establish the compensation for, evaluate the independent auditors, and the independent auditors shall report directly to the Committee.
- The Committee shall review and approve the independent auditors' compensation and consider their audit plan and procedures and review any problems arising from the annual audit examination.
- The Committee shall pre-approve all audit and non-audit services provided to the Company by the independent auditors. The Committee shall prohibit the independent auditors from performing non-audit services, as required by applicable Public Company Accounting Oversight Board (the "Accounting Oversight Board") regulations and other applicable legal requirements (including Section 10A(g) of the Exchange Act). The Committee may delegate to one or more of its members the authority to grant preapprovals required hereunder. The decisions of any member to whom authority is delegated to grant preapprovals shall be presented to the full Committee at its next scheduled meeting.
- The choice of independent auditors shall be annually ratified by the shareholders of the Company.
- The Committee shall:
 - o Receive from the independent auditors, at least annually, a formal written statement delineating all relationships between the auditor and the Company consistent with Independence Standards Board Standard No. 1;
 - o Discuss with the independent auditors any such disclosed relationships and their impact on the independent auditors' objectivity and independence;
 - o Develop guidelines for the Company's hiring of employees of the independent auditors who were engaged on the Company's account, which shall include a prohibition on hiring any such employee as chief executive officer, chief financial officer, chief accounting officer, controller, or any equivalent positions, during one-year periods prior to the commencement of the audit; and
 - o Obtain and review, at least annually, a report by the independent auditors describing: the firm's internal quality-control procedures and, in order to assess the auditor's independence, all relationships between the independent auditors and the Company.

Financial Statements

- The Committee shall review with management and the independent auditors the audited financial statements and the Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") disclosures to be included in the Company's Annual Report on Form 10-K and the Annual Report to Stockholders, and review and consider with the independent auditors the matters required to be discussed by Statement on Auditing Standards ("SAS") No. 61, as amended (AICPA, *Professional Standards*, Vol. 1, AU section 380), as adopted by the Public Company Accounting Oversight Board in Rule 3200T. The Committee shall determine whether to recommend inclusion of these financial statements in these reports.
- The Committee shall review with management and the independent auditors the Company's financial results and MD&A disclosures to be included in the Company's Quarterly Reports on Form 10-Q and the matters required to be discussed by SAS No. 114, prior to the Company's filing of the Form 10-Q.
- The Committee shall review with management the types of information to be disclosed and the presentations to be made in earnings press releases as far in advance as practical.
- The Committee shall require the independent auditors to report timely to the Committee all critical accounting policies and practices to be used by the Company; all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the issuer, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the independent auditors; and other material written communications between the independent auditors and management, such as any management letter or schedule of unadjusted differences.
- The Committee shall review major changes and other major questions of choice respecting the application of appropriate accounting principles, and the existence and substance of any material accruals, reserves and estimates in the preparation of the Company's financial statements. The Committee shall discuss with the independent auditors, and confirm that the Company's financial statements reflect, all material correcting adjustments identified by them in accordance with GAAP and SEC rules and regulations.
- The Committee shall review material pending legal proceedings involving the Company and consider other contingent liabilities, as well as other risks and exposures that may have a material impact on the financial statements.
- The Committee shall review with management and the independent auditors the financial statement effects of pending regulatory and accounting initiatives.
- The Committee shall review with management, for a general understanding, management's risk assessment and risk management guidelines.
- The Committee shall review all material off-balance sheet transactions.
- The Committee shall review and oversee the resolution of any significant potential disputes or disagreements between management and the Company's independent auditors that

arose in connection with the preparation of the Company's financial statements or financial reporting generally.

- The Committee shall prepare an Audit Committee Report for inclusion in the Company's annual meeting of stockholders proxy statement as required by SEC regulations.

Finance Matters

- The Committee shall review, approve and/or disapprove potential financing proposals and refer to the Board for vote when appropriate.
- The Committee shall advise management on financial market issues.

CEO/CFO Certifications, Internal Controls and Complaints

- The Committee shall review as appropriate with the Company's chief executive officer and chief financial officer the contents of the personal certifications required to be made by them pursuant to Sections 302 and 906 of the S-O Act.
- The Committee shall consider the quality and adequacy of the Company's internal controls and will review with management and the independent auditors their assessments of the adequacy of internal controls, and the resolution of identified material weaknesses and reportable conditions in internal controls, including the prevention or detection of management override or compromise of the internal control system.
- The Committee shall review the Company's policies and procedures regarding compliance with applicable laws and regulations, which shall include a Code of Ethics that complies with the requirements promulgated under Section 406 of the S-O Act and the SEC regulations adopted pursuant to this section, and a Code of Conduct that complies with the standards contained in NASDAQ rules.
- The Committee shall review and approve all related party transactions and any modifications thereto and consult with management, legal counsel, and the independent auditors to ensure that such transactions are effected and disclosed in conformity with applicable legal requirements and the Company's Code of Ethics and Conduct Code of Conduct.
- The Committee shall inquire into any evidence of illegal conduct or non-compliance with Company policies of which it may become aware.
- The Committee shall establish procedures and administer a Whistleblower policy and a reporting process through an independent third party for (i) the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls or auditing matters or suspected violations of the Company's Code of Ethics, Code of Conduct or other policies and procedures of the Company, and (ii) the confidential, anonymous submission by employees of the Company of concerns regarding questionable accounting or auditing matters or suspected violations of the Company's Code of Ethics, Code of Conduct or other policies and procedures. These

compliance procedures shall conform with Section 301 of the S-O Act and all rules and regulations pursuant Whistleblower Program mandated by Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act including protection of employees against retaliation such as unlawful discharge, demotion, suspension, direct or indirect threats, harassment or discrimination

Procedures

- In discharging its oversight role, the Committee is empowered to investigate any matter brought to its attention with full access to all books, records, facilities and personnel of the Company and authority to retain outside counsel, auditors or other experts for this purpose.
- The Committee shall have the authority to retain, establish the compensation for and terminate outside counsel and other experts and advisors, including public accountants, as it determines appropriate to assist in the full performance of its functions.
- The Committee shall meet as often as deemed necessary or appropriate in its judgment, generally at least four times each year, either in person or by phone. The Committee or a member of the Committee shall meet with the independent auditors at least quarterly.
- The Committee shall meet on occasion with the independent auditors outside the presence of senior management.
- The Committee shall review with the independent auditors any problems or difficulties the auditors may have encountered and any management letter provided by the auditors and management's response to that letter.
- The Committee may undertake an annual performance evaluation of the Committee.
- The Committee shall review the adequacy of this Charter on an annual basis and recommend changes to the Board for approval.
- The Company shall provide for appropriate funding, as determined by the Committee, in its capacity as a committee of the Board, for payment of: compensation to independent auditors engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the Company; compensation to any advisers appropriately employed by the Committee; and ordinary administrative expenses of the Committee that are necessary or appropriate in carrying out its duties.