

# FUELCELL ENERGY INC

## FORM 8-K (Current report filing)

Filed 02/09/12 for the Period Ending 02/03/12

Address	3 GREAT PASTURE RD DANBURY, CT 06813
Telephone	2038256000
CIK	0000886128
Symbol	FCEL
SIC Code	3690 - Miscellaneous Electrical Machinery, Equipment,
Industry	Semiconductors
Sector	Technology
Fiscal Year	10/31

---

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

---

**FORM 8-K**

---

**CURRENT REPORT**

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

**Date of Report (Date of earliest event reported): February 3, 2012**

---

**FUELCELL ENERGY, INC.**

(Exact name of registrant as specified in its charter)

---

**Delaware**  
(State or other jurisdiction  
of incorporation)

**1-14204**  
(Commission  
File Number)

**06-0853042**  
(IRS Employer  
Identification No.)

**3 Great Pasture Road, Danbury, Connecticut 06813**  
(Address of principal executive offices, including zip code)

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

**Not Applicable**

(Former name or former address, if changed since last report)

---

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions ( see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
- 
-

---

**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

In preparation for the FuelCell Energy, Inc. (the "Corporation") 2012 Proxy Statement, the Corporation identified that its By-Laws, specifically the duties of the Chairman of the Board and the President of the Corporation, did not properly reflect the current structure of the Corporation and the duties of these two positions. Accordingly, on February 3, 2012, the Corporation amended its Amended and Restated By-Laws, effective as of that date, to revise the duties of the Chairman of the Board and the President of the Corporation. A copy of the amendment to the Corporation's Amended and Restated By-Laws is attached to this report as Exhibit 3(ii) and incorporated herein by reference.

**Item 5.07(d) Submission of Matters to a Vote of Security Holders**

As previously reported, at the Annual Meeting of the Corporation held on April 7, 2011, an advisory vote was conducted on the frequency of future advisory votes on executive compensation. The Board of Directors of the Corporation (the "Board") recommended that advisory votes be held every three years, and a majority of the shares were voted for advisory votes to be held every three years. The Corporation has decided, consistent with the vote of the Corporation's shareholders and the recommendation from the Board, to submit a separate resolution on the compensation of the Corporation's named executive officers to the Corporation's shareholders for an advisory vote every three years in its proxy materials (the next such vote being at the 2014 Annual Meeting of Shareholders of the Corporation) until the next required vote on the frequency of shareholder votes on the compensation of the Corporation's named executive officers.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3(ii)	Resolutions of the Board of Directors of FuelCell Energy, Inc., dated February 3, 2012, amending the Amended and Restated By-Laws

---

**SIGNATURES**

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

FUELCELL ENERGY, INC.

Date: February 9, 2012

By: /s/ Michael Bishop  
Michael Bishop  
Senior Vice President, Chief Financial Officer, Corporate  
Secretary and Treasurer

**RESOLUTIONS WITH RESPECT TO THE AMENDMENT AND RESTATEMENT OF BYLAWS**

RESOLVED, that Section 3.8 of the Amended and Restated By-Laws of the Corporation be, and it hereby is, revised to read in its entirety as follows:

Section 3.8 Chairman of the Board. The chairman of the board shall preside at all meetings of stockholders and at all meetings of the board of directors. He shall be ex-officio a member of all standing committees. In general, he shall perform all duties incident to the office of chairman of the board, as herein defined, and all such other duties as from time to time may be assigned to him by the board of directors. At the discretion of the board of directors, either the chairman of the board or the president shall be the chief executive officer of the corporation.

RESOLVED FURTHER, that the first two sentences of Section 3.9 of the Amended and Restated By-Laws of the Corporation be, and they hereby are, revised to read as follows:

The president shall be the chief administrative officer of the Corporation and as such shall have general supervision of the affairs of the Corporation, subject to the control of the board of directors. Subject to the control and direction of the board of directors, the president may enter into any contract or execute and deliver any instrument in the name and on behalf of the corporation.