

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

FORM S-8

REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

EOS ENERGY ENTERPRISES, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

3690

(Primary Standard Industrial
Classification Code Number)

84-4290188

(IRS Employer
Identification No.)

3920 Park Avenue

Edison, New Jersey 08820

(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: (732) 225-8400

Amended and Restated 2020 Incentive Plan

(Full title of the plans)

Joe Mastrangelo

Chief Executive Officer

Eos Energy Enterprises, Inc.

3920 Park Avenue

Edison, New Jersey 08820

Tel: (732) 27225-8400

(Name, address and telephone number, including area code, of agent for service)

Copies to

Michael Kaplan

Adam Kaminsky

Davis Polk & Wardwell LLP

450 Lexington Avenue

New York, New York 10017

Tel: (212) 450-4000

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 the "large accelerated filer," "accelerated filer," "non-accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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.

**REGISTRATION OF ADDITIONAL SHARES
PURSUANT TO GENERAL INSTRUCTION E**

Pursuant to General Instruction E of Form S-8, Eos Energy Enterprises, Inc. (“**Registrant**”) is filing this Registration Statement on Form S-8 with the U.S. Securities and Exchange Commission (the “**Commission**”) to register 8,000,000 additional shares of the Registrant’s Common Stock for issuance under the Eos Energy Enterprises, Inc. Amended and Restated 2020 Incentive Plan (“**2020 Plan**”). This Registration Statement hereby incorporates by reference the contents of the Registrant’s registration statements on Form S-8 filed with the Commission on June 4, 2021 (Registration No. 333-256766) and June 17, 2022 (Registration No. 333-265708). In accordance with the instructional note to Part I of Form S-8 as promulgated by the Commission, the information specified by Part I of Form S-8 has been omitted from this Registration Statement.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

We hereby incorporate by reference into this registration statement the following documents previously filed with the Commission:

- (a) The Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the Commission on February 28, 2023 (File No. 001-39291) (the “Annual Report”);
- (b) All other reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), since the end of the fiscal year covered by the Annual Report (other than the portions of these documents not deemed to be filed); and
- (c) The description of the Common Stock contained in Exhibit 4.5 to the Registrant’s Annual Report, including any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents; provided, however, that documents or information deemed to have been furnished and not filed in accordance with the rules of the Commission shall not be deemed incorporated by reference into this Registration Statement. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 8. Exhibits.

Exhibit Number	Description of Document	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
4.1	Third Amended and Restated Certificate of Incorporation	10-K	001-39291	3.1	2/28/2023	
4.2	Second Amended and Restated Bylaws	8-K	001-39291	3.2	5/19/2022	
5.1	Opinion of Davis Polk & Wardwell LLP					X
23.1	Consent of Independent Registered Public Accounting Firm					X
23.2	Consent of Davis Polk & Wardwell LLP (included in Exhibit 5.1)					X
24.1	Power of Attorney (see signature page)					X
99.1	Amended and Restated 2020 Incentive Plan	S-8	333-256766	99.1	6/4/2021	
99.2	First Amendment to the Amended and Restated 2020 Incentive Plan	S-8	333-265708	99.2	6/17/2022	
99.3	Second Amendment to the Amended and Restated 2020 Incentive Plan					X
107	Calculation of Filing Fee Table					X

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Edison, State of New Jersey, on June 23, 2023.

EOS ENERGY ENTERPRISES, INC.

By: /s/ Joe Mastrangelo
Name: Joe Mastrangelo
Title: Chief Executive Officer and Director
(Principal Executive Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Joe Mastrangelo, Nathan Kroeker and Melissa Berube, and each of them, his or her true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments, including post-effective amendments, to this Registration Statement, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents, or his or her substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1933, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Name	Position	Date
<u>/s/ Joe Mastrangelo</u> Joe Mastrangelo	Chief Executive Officer and Director (Principal Executive Officer)	June 23, 2023
<u>/s/ Nathan Kroeker</u> Nathan Kroeker	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	June 23, 2023
<u>/s/ Jeffrey Bornstein</u> Jeffrey Bornstein	Director	June 23, 2023
<u>/s/ Alex Dimitrief</u> Alex Dimitrief	Director	June 23, 2023
<u>/s/ Audrey Zibelman</u> Audrey Zibelman	Director	June 23, 2023
<u>/s/ Claude Demby</u> Claude Demby	Director	June 23, 2023
<u>/s/ Russell Stidolph</u> Russell Stidolph	Director	June 23, 2023
<u>/s/ Marian "Mimi" Walters</u> Marian "Mimi" Walters	Director	June 23, 2023

Calculation of Filing Fee Table

Form S-8
(Form Type)

Eos Energy Enterprises, Inc.
(Exact Name of Registrant as Specified in its Charter)

Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price Per Unit ⁽²⁾	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common stock, par value \$0.0001 per share	Rule 457(c) and Rule 457(h)	8,000,000	\$3.14	\$25,120,000.00	0.0001102	\$2,768.22
Total Offering Amounts					\$25,120,000.00		\$2,768.22
Total Fee Offsets							\$—
Net Fee Due							\$2,768.22

(1) Pursuant to Rule 416 of the Securities Act of 1933, this Registration Statement includes an indeterminate number of additional shares of the Registrant's Common Stock, par value \$0.0001 per share ("Common Stock"), which may be necessary to adjust the number of shares reserved for issuance pursuant to the Eos Energy Enterprises, Inc. Amended and Restated 2020 Incentive Plan as a result of a stock split, stock dividend or similar adjustment of the outstanding common stock of the Registrant.

(2) Computed solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and 457(h) under the Securities Act on the basis of the average of the high and low prices per share of Common Stock on the Nasdaq Capital Market on June 20, 2023, which date is within five business days prior to filing this Registration Statement.

OPINION OF DAVIS POLK & WARDWELL LLP

June 23, 2023

Eos Energy Enterprises, Inc.
3920 Park Avenue
Edison, New Jersey 08820

Ladies and Gentlemen:

We have acted as special counsel to Eos Energy Enterprises, Inc., a Delaware corporation (the “**Company**”), and are delivering this opinion in connection with the Company’s Registration Statement on Form S-8 (the “**Registration Statement**”) filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, for the registration of 8,000,000 shares (the “**Shares**”) of the Company’s Common Stock, par value \$0.0001 per share (“**Common Stock**”), issuable pursuant to the Eos Energy Enterprises, Inc. Amended and Restated 2020 Incentive Plan (the “**Plan**”).

We, as your counsel, have examined originals or copies of such documents, corporate records, certificates of public officials and other instruments as we have deemed necessary or advisable for the purpose of rendering this opinion.

In rendering the opinion expressed herein, we have, without independent inquiry or investigation, assumed that (i) all documents submitted to us as originals are authentic and complete, (ii) all documents submitted to us as copies conform to authentic, complete originals, (iii) all signatures on all documents that we reviewed are genuine, (iv) all natural persons executing documents had and have the legal capacity to do so, (v) all statements in certificates of public officials and officers of the Company that we reviewed were and are accurate and (vi) all representations made by the Company as to matters of fact in the documents that we reviewed were and are accurate.

On the basis of the foregoing, we are of the opinion that the Shares have been duly authorized and, when and to the extent issued pursuant to the Plan, upon receipt by the Company of the consideration for the Shares specified therein, will be validly issued, fully paid and non-assessable.

We are members of the Bar of the State of New York and the foregoing opinion is limited to the laws of the State of New York and the General Corporation Law of the State of Delaware.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement.

Very truly yours,

/s/ Davis Polk & Wardwell LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated February 28, 2023 relating to the financial statements of Eos Energy Enterprises, Inc. (the “Company”), appearing in the Annual Report on Form 10-K of the Company for the year ended December 31, 2022.

/s/ Deloitte & Touche LLP

New York, NY

June 23, 2023

**SECOND AMENDMENT TO THE
EOS ENERGY ENTERPRISES, INC.
AMENDED AND RESTATED
2020 INCENTIVE PLAN**

This Second Amendment (the "Amendment") to the Eos Energy Enterprises, Inc. Amended and Restated 2020 Incentive Plan (as amended or restated from time to time, the "Plan") is approved and adopted to be effective as of May 16, 2023 (the "Effective Date").

RECITALS

- A. The stockholders of Eos Enterprises, Inc., a Delaware corporation (the "Company") approved the Amendment effective as of May 16, 2023.
- B. The Company now desires to amend the Plan in accordance with the terms and conditions of this Amendment.

AMENDMENT

NOW THEREFORE, effective as of the Effective Date, Sections 5(b) and Section 7(a) of the Plan are hereby deleted in their entirety and restated as follows:

5. Grant of Awards; Shares Subject to the Plan; Limitations.

(b) Subject to Section 12 of the Plan and this Section 5, Awards granted under the Plan shall be subject to the following limitations: (i) the Committee is authorized to deliver under the Plan an aggregate of 17,035,887 Common Stock; provided, that the maximum number of Common Stock that may be granted under the Plan during any single fiscal year to any Participant who is a non-employee director, when taken together with any cash fees paid to such non-employee director during such year in respect of his service as a non-employee director (including service as a member or chair of any committee of the Board), shall not exceed \$500,000 in total value (calculating the value of any such Awards based on the Fair Market Value on the Date of Grant of such Awards for financial reporting purposes); provided that the non-employee directors who are considered independent (under the rules of The Nasdaq Capital Market or other securities exchange on which the Common Stock is traded) may make exceptions to this limit for a non-executive chair of the Board, if any, in which case the non-employee director receiving such additional compensation may not participate in the decision to award such compensation.

7. Options.

(a) Generally. Each Option granted under the Plan shall be evidenced by an Award Agreement (whether in paper or electronic medium (including email or the posting on a web site maintained by the Company or a third party under contract with the Company)). Each Option so granted shall be subject to the conditions set forth in this Section 7 and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement. All Options granted under the Plan shall be Nonqualified Stock Options unless the applicable Award Agreement expressly states that the Option is intended to be an Incentive Stock Option. Subject to Section 12, the maximum aggregate number of Common Stock that may be issued through the exercise of Incentive Stock Options granted under the Plan is 16,000,000 Common Stock. Incentive Stock Options shall be granted only to Eligible Persons who are employees of the Company and its Affiliates, and no Incentive Stock Option shall be granted to any Eligible Person who is ineligible to receive an Incentive Stock Option under the Code. No Option shall be treated as an Incentive Stock Option unless the Plan has been approved by the stockholder of the Company in a manner intended to comply with the stockholder approval requirements of Section 422(b)(1) of the Code; provided that any Option intended to be an Incentive Stock Option shall not fail to be effective solely on account of a failure to obtain such approval, but rather such Option shall be treated as a Nonqualified Stock Option unless and until such approval is obtained. In the case of an Incentive Stock Option, the terms and conditions of such grant shall

be subject to and comply with such rules as may be prescribed by Section 422 of the Code. If for any reason an Option intended to be an Incentive Stock Option (or any portion thereof) shall not qualify as an Incentive Stock Option, then, to the extent of such nonqualification, such Option or portion thereof shall be regarded as a Nonqualified Stock Option appropriately granted under the Plan.

IN WITNESS WHEREOF, the Company has executed this Amendment to the Plan as of May 16, 2023.

EOS ENERGY ENTERPRISES, INC.

/s/Melissa Berube
Melissa Berube
General Counsel and Corporate Secretary