

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): August 29, 2024

EOS ENERGY ENTERPRISES, INC.
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

001-39291

(Commission File 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

N/A

(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:

- 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))

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	EOSE	The Nasdaq Stock Market LLC
Warrants, each exercisable for one share of common stock	EOSEW	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

As previously disclosed, on June 21, 2024, Eos Energy Enterprises, Inc. (the “Company”) entered into a credit and guaranty agreement (the “Credit Agreement”), by and among the Company, certain of the Company’s subsidiaries as guarantors party thereto, CCM Denali Debt Holdings, LP, acting through Cerberus Capital Management II, L.P. (“Cerberus”), as administrative agent and collateral agent and the lenders party thereto from time to time (the “Lenders”), pursuant to which the Lenders have provided a \$210.5 million secured multi-draw facility (the “Delayed Draw Term Loan”) to be made in four installments (\$75 million, which was funded on June 21, 2024, and the remainder upon three additional draws), and a \$105 million revolving credit facility, to be made available at the Lenders’ sole discretion and only if the Delayed Draw Term Loan is fully funded (the “Revolving Facility” and together with the Delayed Draw Term Loan, the “Facilities”), on terms and subject to conditions set forth in the Credit Agreement. For additional terms of the Credit Agreement and the Delayed Draw Term Loan, please see the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission on June 24, 2024 (the “Prior Filing”). Capitalized terms used but not defined herein have the meanings ascribed to them in the Prior Filing.

Upon each draw under the Delayed Draw Term Loan, the Company will issue Warrants and/or Preferred Stock (each as defined in the Prior Filing) in amounts representing predetermined, fully diluted, percentages (an “Applicable Percentage”) of Company common stock, par value \$0.0001 per share (the “Common Stock”). Upon any failure to achieve a milestone, in addition to not being able to receive a draw on the Delayed Draw Term Loan unless waived by the Lenders, the Applicable Percentage will be subject to up to a 4.0% increase for all milestone events as to each of the four milestone measurement dates.

On August 28, 2024, the Company and Cerberus mutually confirmed that the Company satisfied all four applicable performance milestones comprising the first milestone (the “First Milestone”) ahead of the August 31, 2024 milestone measurement date (the “First Milestone Measurement Date”), related to the Company’s automated line, materials cost, Z3 technology and backlog/cash conversion, pursuant to the terms of the Credit Agreement. On August 29, 2024, the Company submitted a borrowing request under the Credit Agreement, and the Lenders funded the full amount of the scheduled \$30 million draw under the Delayed Draw Term Loan.

In connection with the additional draw and pursuant to the terms and conditions of that certain Securities Purchase Agreement (the “Securities Purchase Agreement”), dated June 21, 2024, by and between the Company and Cerberus, the Applicable Percentage increased by 4.9%, and as a result the Company issued to Cerberus 7 shares of a newly designated Series A-2 Preferred Stock, par value \$0.0001 per share (the “Series A-2 Preferred Stock”), with the number of shares of such series having a liquidation value as if such shares were convertible into an aggregate of 28,806,463 shares of Common Stock. Collectively, the Initial Warrant issued on June 21, 2024 and the liquidation values of the Series A-1 Preferred Stock issued on June 21, 2024 and the Series A-2 Preferred Stock equate to 104,022,720 shares of Common Stock, or an Applicable Percentage of 24.8%. If stockholder approval of the issuance to Cerberus of more than 19.99% of our outstanding Common Stock as of June 21, 2024 (“Stockholder Approval”) is obtained, the Series A-2 Preferred Stock will be convertible into a number of shares of Series B-2 Preferred Stock, par value \$0.0001 per share (“Series B-2 Preferred Stock”) that are convertible into an equal number of shares of Common Stock as then represented by the liquidation value of the Series A-2 Preferred Stock. For additional terms of the Securities Purchase Agreement, please see the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission on June 24, 2024.

If Cerberus, as the purchaser, funds all draws under the Delayed Draw Term Loan and the Company meets each of the remaining milestones under the Delayed Draw Term Loan, Cerberus will be entitled to receive Preferred Stock or Warrants aggregating to an Applicable Percentage of 33.0% or assuming the number of our outstanding shares of Common Stock on a fully diluted basis does not change after August 29, 2024, Preferred Stock and Warrants with respect to an aggregate of 155,357,957 shares of Common Stock, including the Initial Warrant, Series A-1 Preferred Stock and Series A-2 Preferred Stock already issued to Cerberus. If Stockholder Approval is obtained, such shares of Preferred Stock and Warrants would be directly or indirectly convertible into or exercisable for shares of Common Stock, subject only to a beneficial ownership cap of 49.9% of the issued and outstanding Common Stock of the Company.

As a result of meeting the First Milestone, if Cerberus funds all draws under the Delayed Draw Term Loan and the Company fails to meet all of the remaining milestones under the Delayed Draw Term Loan, Cerberus would be entitled to receive Preferred Stock or Warrants aggregating to a maximum Applicable Percentage of 45.0% (previously 49.0%), or assuming the number of our outstanding shares of Common Stock on a fully diluted basis does not change after August 29, 2024, Preferred Stock and Warrants with respect to an aggregate of 258,073,962 shares of Common Stock, including the Initial Warrant, Series A-1 Preferred Stock and Series A-2 Preferred Stock already issued to Cerberus. If Stockholder Approval is obtained such shares of Preferred Stock and Warrants would be directly or indirectly convertible into or exercisable for shares of Common Stock, subject only to a beneficial ownership cap of 49.9% of the issued and outstanding Common Stock of the Company.

Item 3.02 Unregistered Sales of Equity Securities.

The information in Item 2.03 of this Current Report on Form 8-K (this “Report”) related to the issuance of the Series A-2 Preferred Stock is incorporated by reference herein.

The issuance of the Series A-2 Preferred Stock was not registered under the Securities Act of 1933, as amended (the “Securities Act”), and was issued in reliance upon the exemption provided in Section 4(a)(2) of the Securities Act.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth in Item 5.03 related to the Series A-2 Certificate of Designation (as defined below) and Exhibit 3.1 is incorporated by reference herein.

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

On August 29, 2024, the Company filed with the Secretary of State of the State of Delaware the Series A-2 Certificate of Designation attached hereto as Exhibit 3.1 (the “Series A-2 Certificate of Designation”).

Under the terms of the Series A-2 Certificate of Designation, each share of Series A-2 Preferred Stock has an original issue price of \$9,555,515.30 (the “A-2 Original Issue Price”) and a liquidation value, payable pari passu with the Common Stock, as if such share was convertible into 4,115,209 shares, or an aggregate of 28,806,463 shares of Common Stock, subject to adjustment. The Series A-2 Preferred Stock is non-voting and non-convertible into Common Stock. Holders of the Series A-2 Preferred Stock are entitled to receive dividends or distributions on each share of Series A-2 Preferred Stock equal to dividends or distributions actually paid on each share of Common Stock, multiplied by the number of shares of Common Stock represented by the Series A-2 Preferred Stock Liquidation Value (as defined in the Series A-2 Certificate of Designation). The Series A-2 Preferred Stock will become convertible into shares of Series B-2 Preferred Stock if Stockholder Approval is obtained.

Under the terms of the Series A-2 Certificate of Designation, at all times when the holders of the Preferred Stock beneficially own at least 10.0% of the capital stock of the Company (subject to adjustment as indicated in the Series A-2 Certificate of Designation), such holders of Preferred Stock of the Company, exclusively and voting together as a separate class, will have the right to appoint one (1) director to the board of directors of the Company (the “Board”). At all times holders of the Preferred Stock beneficially own at least 15.0% of the capital stock of the Company (subject to adjustment as indicated in the Series A-2 Certificate of Designation), such holders of the Preferred Stock, exclusively and voting together as a separate class, will have the right to appoint a second director to the Board. At all times holders of the Preferred Stock beneficially own at least 30.0% of the capital stock of the Company (subject to adjustment as indicated in the Series A-2 Certificate of Designation), such holders of the Preferred Stock, exclusively and voting together as a separate class, will have the right to appoint a third director to the Board. At all times holders of the Preferred Stock beneficially own at least 40.0% of the capital stock of the Company (subject to adjustment as indicated in the Series A-2 Certificate of Designation), such holders of the Preferred Stock, exclusively and voting together as a separate class, will have the right to nominate and designate a fourth director, who shall be designated by the Board or the nominating committee of the Board to a class of common directors and stand for election as a common director on the Board; provided that, the nominating committee of the Board determine that such appointment of the fourth director not result in a change of control under any Company governing documents or violate any applicable laws, including requirements of the SEC and Nasdaq. In the event that any such fourth director is not approved by the stockholders of the Company at the applicable annual meeting of stockholders, the holders of record of the shares of Preferred Stock will have the right to appoint and elect a replacement for such director, pursuant to the approval requirements set forth above. To the extent any of such directors qualify to serve on any committees of the Board, for each such committee for which at least one (1) director is qualified, such director will be entitled to serve on such committee of the Board. So long as the holders of Series A-2 Preferred Stock have a right to appoint a director, the holders thereof will be entitled to appoint a non-voting observer to the Board. At all times when the holders of Preferred Stock have a right to appoint a director, the holders of Preferred Stock shall not vote any shares of Common Stock they receive upon the conversion of any Preferred Stock or the exercise of any Warrants in any appointment of directors.

At any time after the fifth (5th) anniversary of the original issue date (which is the date on which the Series A-2 Certificate of Designation with the Secretary of State of Delaware), the outstanding shares of Series A-2 Preferred Stock held by any holder become redeemable for cash at the redemption price. The redemption price will be an amount per share equal to the greater of (i) A-2 Original Issue Price plus all accrued and unpaid dividends thereon, up to and including the date of redemption and (ii) the number of shares of Common Stock represented by the Series A-2 Liquidation Value (as defined in the Series A-2 Certificate of Designation) multiplied by the average of the closing sale price of the Common Stock for the five (5) business days immediately prior to the date of redemption plus all accrued and unpaid dividends thereon, up to and including the date of redemption. Subject to certain excluded issuances (as defined in the Series A-2 Certificate of Designation), the Series A-2 Preferred Stock is subject to anti-dilution protection in the number of shares of Common Stock represented by the liquidation preference.

Until the later of (i) such time when the holders of Preferred Stock shall no longer beneficially own at least 5% of the outstanding capital stock of the Corporation and (ii) five years after the original issue date of the Series A-2 Preferred Stock, the Preferred Stock shall have certain other protective provisions including, among others, limiting the ability of the Company to perform any of the following without the affirmative vote or consent of the holders of the Preferred Stock: (i) liquidate, dissolve or wind-up the business and affairs of the Company or effect any event that requires a distribution to the Company's stockholders in accordance to their liquidation preference, or any other merger, consolidation, statutory conversion, transfer, domestication or continuance; (ii) amend, alter or repeal any provision of the certificate of formation or bylaws of the Company in a manner that adversely affects the special rights, powers and preferences of the Preferred Stock (or any series thereof); (iii) create or issue or obligate itself to issue shares of, or reclassify, any capital stock other than excluded issuances (as defined in the Series A-2 Certificate of Designation); (iv) increase or decrease the authorized number of shares of preferred stock, or create any additional class or series of capital stock of the Company (other than increases in the number of authorized shares of Common Stock); or (v) purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Company other than (a) redemptions of or dividends or distributions on the Preferred Stock as expressly authorized therein or in the certificate of designation of any Preferred Stock, and (b) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock.

The foregoing description of the Series A-2 Preferred Stock does not purport to be complete and is qualified in its entirety by reference to the full text of the Series A-2 Certificate of Designation, a copy of which is filed as Exhibit 3.1 hereto and incorporated herein by reference.

Item 8.01 Other Events.

On August 29, 2024, the Company issued a press release announcing the satisfaction of all four applicable performance milestones comprising the First Milestone ahead of the First Milestone Measurement Date, pursuant to the terms of the Credit Agreement. A copy of the Company's press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Additionally, on August 26, 2024, the U.S. Department of Energy (the "DOE") extended the expiration date of the conditional commitment letter to the Company for a loan of an aggregate principal amount of up to \$398,600,000 through the DOE's Clean Energy Financing Program to December 31, 2024, in order to allow for additional time to finalize transaction documents. Certain technical, legal and financial conditions must be met and due diligence to the satisfaction of the DOE must be completed before the DOE enters into definitive financing documents with the Company and funds the loan. The Company continues to work with the DOE to meet these conditions and close the loan, however, there can be no assurance that the Company will be able to secure such a loan or on terms that are acceptable to the Company.

Important Information and Where You Can Find It

This Report may be deemed to be solicitation material in respect of a vote of stockholders to approve the issuance of more than 19.99% of the outstanding Common Stock under the Warrants and the convertibility of preferred stock issued or issuable as part of the transactions contemplated by the Credit Agreement and the Securities Purchase Agreement (collectively, the "Transactions"). In connection with the requisite Stockholder Approval, the Company filed on August 8, 2024, a definitive proxy statement (the "Definitive Proxy Statement"), which is available at the SEC's website (<http://www.sec.gov>) and has been sent to the stockholders of the Company, seeking certain approvals related to the exercisability of the Warrants and the convertibility of the Preferred Stock issued or issuable pursuant to the transactions contemplated by Transactions.

INVESTORS AND SECURITY HOLDERS OF THE COMPANY AND ITS RESPECTIVE AFFILIATES ARE URGED TO READ THE DEFINITIVE PROXY STATEMENT AND ANY OTHER RELEVANT DOCUMENTS FILED OR TO BE FILED WITH THE SEC IN CONNECTION WITH THE TRANSACTIONS, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THOSE DOCUMENTS, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE COMPANY AND THE TRANSACTIONS. Investors and security holders will be able to obtain a free copy of the proxy statement, as well as other relevant documents filed with the SEC containing information about the Company, without charge, at the SEC's website (<http://www.sec.gov>). Copies of documents filed with the SEC can also be obtained, without charge, by directing a request to Investor Relations, the Company Energy Enterprises, Inc. at 862-207-7955 or email ir@eose.com.

Participants in the Solicitation of Proxies in Connection with Financing

The Company and certain of its respective directors, executive officers and employees may be deemed under the rules of the SEC to be participants in the solicitation of proxies with respect to the requisite Stockholder Approval related to the Transactions. Information regarding the Company directors and officers is available in (i) its definitive proxy statement for the 2024 annual stockholders meeting, which was filed with the SEC on April 2, 2024, and (ii) its current reports on Form 8-K filed by the Company on June 24, 2024, and July 29, 2024. Other information regarding the participants in the solicitation of proxies in respect to the Transactions and the description of their direct and indirect interests, as security holders or otherwise, is contained in the Definitive Proxy Statement and other relevant materials to be filed by the Company with the SEC. Free copies of these documents, when available, may be obtained as described in the preceding paragraph.

Forward-Looking Statements

Except for the historical information contained herein, the matters set forth in this Report are forward-looking statements within the meaning of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements include, but are not limited to, statements regarding our expected revenue, contribution margins, orders backlog and opportunity pipeline for the fiscal year ended December 31, 2024, our path to profitability and strategic outlook, the tax credits available to our customers or to the Company pursuant to the Inflation Reduction Act of 2022, the delayed draw term loan, milestones thereunder and the anticipated use of proceeds therefrom, the ability to draw under the delayed draw term loan, statements regarding our ability to secure final approval of a loan from the Department of Energy LPO, or our anticipated use of proceeds from any loan facility provided by the DOE, statements that refer to outlook, projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions. The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intends,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “would” and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Forward-looking statements are based on our management’s beliefs, as well as assumptions made by, and information currently available to, them. Because such statements are based on expectations as to future financial and operating results and are not statements of fact, actual results may differ materially from those projected.

Factors which may cause actual results to differ materially from current expectations include, but are not limited to: changes adversely affecting the business in which we are engaged; our ability to forecast trends accurately; our ability to generate cash, service indebtedness and incur additional indebtedness; our ability to achieve the operational milestones on the delayed draw term loan; our ability to raise financing in the future, including the discretionary revolving facility from Cerberus; our customers’ ability to secure project financing; the amount of final tax credits available to our customers or to the Company pursuant to the Inflation Reduction Act, uncertainties around our ability to meet the applicable conditions precedent and secure final approval of a loan, in a timely manner or at all from the Department of Energy, Loan Programs Office, or the timing of funding and the final size of any loan that is approved; the possibility of a government shutdown while we work to meet the applicable conditions precedent and finalize loan documents with the U.S. Department of Energy Loan Programs Office or while we await notice of a decision regarding the issuance of a loan from the Department Energy Loan Programs Office; our ability to continue to develop efficient manufacturing processes to scale and to forecast related costs and efficiencies accurately; fluctuations in our revenue and operating results; competition from existing or new competitors; our ability to convert firm order backlog and pipeline to revenue; risks associated with security breaches in our information technology systems; risks related to legal proceedings or claims; risks associated with evolving energy policies in the United States and other countries and the potential costs of regulatory compliance; risks associated with changes to the U.S. trade environment; risks resulting from the impact of global pandemics, including the novel coronavirus, Covid-19; our ability to maintain the listing of our shares of common stock on NASDAQ; our ability to grow our business and manage growth profitably, maintain relationships with customers and suppliers and retain our management and key employees; risks related to the adverse changes in general economic conditions, including inflationary pressures and increased interest rates; risk from supply chain disruptions and other impacts of geopolitical conflict; changes in applicable laws or regulations; the possibility that the Company may be adversely affected by other economic, business, and/or competitive factors; other factors beyond our control; risks related to adverse changes in general economic conditions; and other risks and uncertainties.

The forward-looking statements contained in this Report are also subject to additional risks, uncertainties, and factors, including those more fully described in the Company’s most recent filings with the SEC, including the Company’s most recent Annual Report on Form 10-K and subsequent reports on Forms 10-Q and 8-K. Further information on potential risks that could affect actual results will be included in the subsequent periodic and current reports and other filings that the Company makes with the SEC from time to time. Moreover, the Company operates in a very competitive and rapidly changing environment, and new risks and uncertainties may emerge that could have an impact on the forward-looking statements contained in this Report.

Forward-looking statements speak only as of the date they are made. Readers are cautioned not to put undue reliance on forward-looking statements, and, except as required by law, the Company assumes no obligation and does not intend to update or revise these forward-looking statements, whether as a result of new information, future events, or otherwise.

Item 9.01 Financial Statement and Exhibits.

(d) Exhibits

Exhibit No.	Description
3.1	Series A-2 Preferred Stock Certificate of Designation.
99.1	Press release, dated August 29, 2024, issued by Eos Energy Enterprises, Inc.
104	Cover Page Interactive Date File (embedded with the Inline XBRL document).

SIGNATURE

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.

EOS ENERGY ENTERPRISES, INC.

Dated: August 30, 2024

By: /s/ Nathan Kroeker

Name: Nathan Kroeker

Title: Chief Financial Officer

CERTIFICATE OF DESIGNATION
OF
SERIES A-2 NON-VOTING NON-CONVERTIBLE PREFERRED STOCK
OF
EOS ENERGY ENTERPRISES, INC.

(Pursuant to Section 151 of the General Corporation Law of the State of Delaware)

The undersigned, Michael Silberman, the Secretary of Eos Energy Enterprises, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "**Corporation**"), does hereby certify, in the name of and on behalf of the Corporation, and as its corporate act, that in accordance with the Corporation's Second Amended and Restated Bylaws (the "**Bylaws**"), the Board of Directors (the "**Board**") of the Corporation has adopted the following preamble and resolution at a meeting of the Board held on June 21, 2024:

WHEREAS, the Third Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on November 16, 2020, as amended by that certain First Amendment to the Third Amended and Restated Certificate of Incorporation as filed with the Secretary of State of the State of Delaware on June 28, 2022 and that certain Second Amendment to the Third Amended and Restated Certificate of Incorporation as filed with the Secretary of State of the State of Delaware on May 8, 2024 (as amended, the "**Restated Certificate**") provides for a class of shares of stock designated "**Preferred Stock**," issuable from time to time in one or more series, and vests in the Board of the Corporation the authority to fix the number of shares to be included in each such series and to fix the voting rights, if any, designations, powers, preferences and relative, participating, optional, special and other rights, if any, of each such series and any qualifications, limitations and restrictions thereof.

NOW, THEREFORE, BE IT RESOLVED that there shall be a series of Preferred Stock of the Corporation to be designated as follows and that the powers, preferences and relative, participating, optional or other rights of the shares of such series of Preferred Stock and the qualifications, limitations and restrictions thereof shall be as follows:

SECTION 1. DESIGNATION. There is hereby provided a series of Preferred Stock designated the Series A-2 Non-Voting Non-Convertible Preferred Stock (the "**Series A-2 Preferred Stock**").

SECTION 2. NUMBER. The number of shares constituting the Series A-2 Preferred Stock is fixed at seven (7) shares.

SECTION 3. DEFINITIONS. For purposes of this Certificate of Designation the following definitions shall apply:

3.1 "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

3.2 "**Alternative Selection Deadline**" shall have the meaning set forth in Section 15.1.

3.3 "**Applicable Shares**" shall have the meaning set forth in Section 9(c).

3.4 "**Board**" means the Board of Directors of the Corporation.

3.5 "**Board Observer**" shall have the meaning set forth in Section 6.2(b).

3.6 "**Change of Control**" shall have the meaning set forth in Section 5.4.

- 3.7 “**Common Stock**” means the Common Stock, \$0.0001 par value per share, of this Corporation.
- 3.8 “**Convertible Securities**” shall have the meaning set forth in Section 9.1.
- 3.9 “**Corporation**” means Eos Energy Enterprises, Inc.
- 3.10 “**Credit Agreement**” shall have the meaning set forth in Section 6.3.
- 3.11 “**Disputing Party**” shall have the meaning set forth in Section 15.1.
- 3.12 “**Excluded Issuance**” shall have the meaning set forth in Section 9.4.
- 3.13 “**Dispute Submission Deadline**” shall have the meaning set forth in Section 15.2.
- 3.14 “**Disputed Calculation**” or “**Disputed Calculations**” shall have the meaning set forth in Section 15.1.
- 3.15 “**Disputing Party’s Selection List**” shall have the meaning set forth in Section 15.1.
- 3.16 “**Final Selection Deadline**” shall have the meaning set forth in Section 15.1.
- 3.17 “**Investor Preferred Stock**” shall have the meaning set forth in Section 6.3.
- 3.18 “**Investor Related Parties**” shall have the meaning set forth in Section 16.
- 3.19 “**Investor Transactions**” shall have the meaning set forth in Section 16.
- 3.20 “**Original Issue Date**” means the date this Certificate of Designation is filed with the Secretary of State of the State of Delaware.
- 3.21 “**Original Issue Price**” nine million five hundred fifty-five thousand five hundred fifteen dollars and thirty cents (\$9,555,515.30).
- 3.22 “**Original Issue Price Per Share**” shall have the meaning set forth in Section 9.3.
- 3.23 “**Person**” and “**Persons**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any governmental entity or any department or agency thereof.
- 3.24 “**Redemption Date**” shall have the meaning set forth in Section 8.2.
- 3.25 “**Redemption Notice**” shall have the meaning set forth in Section 8.2.
- 3.26 “**Redemption Price**” shall have the meaning set forth in Section 8.1.
- 3.27 “**Required Dispute Documentation**” shall have the meaning set forth in Section 15.2.
- 3.28 “**Responding Party**” shall have the meaning set forth in Section 15.1.
- 3.29 “**Responding Party’s Selection List**” shall have the meaning set forth in Section 15.1.
- 3.30 “**Securities Purchase Agreement**” shall have the meaning set forth in Section 6.3.
- 3.31 “**Series A-2 Liquidation Value**” shall have the meaning set forth in Section 5.1.
- 3.32 “**Series A-2 Preferred Stock**” shall have the meaning set forth in Section 1.
- 3.33 “**Selection Deadline**” shall have the meaning set forth in Section 15.1.

SECTION 4. DIVIDENDS. If and when the Board declares a dividend or distribution, other than a dividend or distribution for Common Stock or Convertible Securities, which shall be paid to the holders of Common Stock out of funds legally available for that purpose, the holders of shares of Series A-2 Preferred Stock shall be entitled to receive, dividends or distributions on each share of Series A-2 Preferred Stock equal to (and in the same form as): (1) dividends or distributions actually paid on each share of the Common Stock multiplied by (2) the number of shares of Common Stock represented by the Series A-2 Liquidation Value (as defined in Section 5.1). Such dividends or distributions will be paid to the holders of the Series A-2 Preferred Stock when such dividends or distributions are paid on shares of the Common Stock. If the Corporation does not have sufficient funds, assets or surplus, as the case may be, to pay the dividend or distribution required by this Section 4 to holders of Series A-2 Preferred Stock, the dividend declared to holders of Common Stock shall be null and void in all respects.

SECTION 5. LIQUIDATION, DISSOLUTION OR WINDING UP.

5.1 In the event of a voluntary or involuntary liquidation, dissolution, or winding up of the Corporation, the holders of the Series A-2 Preferred Stock shall be entitled to receive distribution of any of the assets or surplus funds of the Corporation pro rata with the holders of the Common Stock and any other shares of Investor Preferred Stock (as defined below) so entitled, as if each share of Series A-2 Preferred Stock were equal to four million one hundred fifteen thousand two hundred nine (4,115,209) shares of Common Stock, which amounts shall be paid *pari passu* with all holders of Common Stock (the “**Series A-2 Liquidation Value**”).

5.2 The dollar amounts specified in Section 5.1 shall be equitably adjusted in the event of any stock dividends, combinations, splits, recapitalizations and the like with respect to the Common Stock or the Series A-2 Preferred Stock and certain other issuances of equity which occur after the filing of this Certificate of Designation pursuant to Section 9 hereof.

5.3 Insofar as any distribution pursuant to Section 5.1 consists of property other than cash, the value thereof shall, for purposes of the provisions of Section 5.1, be the fair value at the time of such distribution, as determined in good faith by the Board, and provided that any securities shall be valued as follows:

(a) Securities not subject to investment letter or other similar restrictions on free marketability covered by (b) below:

(i) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty (30) day period ending three (3) days prior to the date of distribution;

(ii) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the date of distribution; and

(iii) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board.

(b) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder’s status as an Affiliate or former Affiliate) shall be to make an appropriate discount from the market value determined as above in (a) (i), (ii) or (iii) to reflect the approximate fair market value thereof, as determined in good faith by the Board.

5.4 In the event of (i) a merger or consolidation of the Corporation with any other corporation or other entity that results in the inability of the shareholders of the Corporation immediately preceding such merger or consolidation to designate or elect a majority of the board of directors (or its equivalent) of the resulting entity or its parent company, including any such merger or consolidation in which the holders receive cash, securities or other property for their shares, or (ii) the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation to a third party purchaser ((i) or (ii), a “**Change of Control**”), the Series A-2 Preferred Stock shall participate in any cash, securities or other property payable to the shareholders of the Corporation in or as a consequence of such Change of Control pro rata with the holders of Common Stock as if each share of Series A-2 Preferred Stock were the number of shares of Common Stock represented by the Series A-2 Liquidation Value.

SECTION 6. VOTING.

6.1 General. Except as required by applicable law and as set forth below, the holders of the Series A-2 Preferred Stock shall not be entitled as such to receive notice of or to attend any meeting of the stockholders of the Corporation or to vote at any such meeting or any matters of the Corporation.

6.2 Election of Directors; Board Observer Right.

(a) At all times when the holders of Investor Preferred Stock shall beneficially own at least ten percent (10%) of the capital stock of the Corporation (subject to appropriate adjustment in the event of any stock dividend, stock split, combination, or other similar recapitalization with respect to the Preferred Stock or the Common Stock), the holders of record of the shares of Investor Preferred Stock shall have the exclusive right, voting together as a separate class, to appoint and elect one (1) director of the Corporation. At all times when the holders of Investor Preferred Stock shall beneficially own at least fifteen percent (15%) of the capital stock of the Corporation (subject to appropriate adjustment in the event of any stock dividend, stock split, combination, or other similar recapitalization with respect to the Preferred Stock or the Common Stock), the holders of record of the shares of Investor Preferred Stock shall have the exclusive right, voting together as a separate class, to appoint and elect two (2) directors of the Corporation. At all times when the holders of the Investor Preferred Stock shall beneficially own at least thirty percent (30%) of the capital stock of the Corporation (subject to appropriate adjustment in the event of any stock dividend, stock split, combination, or other similar recapitalization with respect to the Preferred Stock or the Common Stock), the holders of record of the shares of Investor Preferred Stock shall have the exclusive right, voting together as a separate class, to appoint and elect three (3) directors of the Corporation. At all times when the holders of Investor Preferred Stock shall beneficially own at least forty percent (40%) of the capital stock of the Corporation (subject to appropriate adjustment in the event of any stock dividend, stock split, combination, or other similar recapitalization with respect to the Preferred Stock or the Common Stock), the holders of record of the shares of Investor Preferred Stock shall have the exclusive right, voting together as a separate class, to nominate and designate a fourth director of the Corporation, provided, however, that any fourth director proposed to be appointed pursuant to this Section 6.2(a) would be subject to the reasonable, good faith review and determination of the nominating and corporate governance committee of the Board (the "Nominating Committee") that the election of such director not result in either (i) the Corporation being in violation of any rules and regulations (including the independence and other director qualification requirements) of the Securities and Exchange Commission or any national securities exchange on which the Corporation's securities are then listed or any other applicable law or (ii) a determination that such appointment would constitute a change in control of the Company under the Company's governing documents or applicable law, in the case of each of the foregoing clauses (i) and (ii) as reasonably determined in good faith by the Nominating Committee upon the written advice of counsel (which such advice shall be shared with the holders of the Investor Preferred Stock), and any such director following appointment shall be designated by the Nominating Committee (or Board) to a class of common directors for approval by the stockholders of the Company at the applicable annual meeting of stockholders. In the event that any such fourth director designated pursuant to the foregoing sentence is not approved by the stockholders of the Company at the applicable annual meeting of stockholders, the holders of record of the shares of Investor Preferred Stock shall have the right to appoint and elect a replacement for such director, in each case pursuant to the Nominating Committee approval requirements set forth above, which such director following Nominating Committee approval shall be designated to the same class of common directors as the prior appointee for approval by the stockholders of the Company at the applicable annual meeting of stockholders to approve directors of such class. To the extent one or more directors are appointed and elected as provided in this Section 6.2(a), for each committee of the Board for which at least one such director is qualified under applicable law and the rules and regulations of any national securities exchange on which the Corporation's securities are then listed to serve, the Board shall invite at least one such director, so qualified, to serve on such committee. The appointment and election of any director pursuant to this Section 6.2(a) may be made by, and only by, the affirmative vote of the holders of record of a majority of the Investor Preferred Stock, given either at a special meeting of such stockholders duly called by such stockholders for that purpose or pursuant to a written consent of such stockholders. Any director appointed and elected as provided in this Section 6.2(a) may be removed without cause by, and only by, the affirmative vote of the holders of a majority of the Investor Preferred Stock, given either at a special meeting of such stockholders duly called by such stockholders for that purpose or pursuant to a written consent of such stockholders, and any such notification may be made by electronic mail directed to the Secretary of the Corporation. In the event that a director appointed and elected by the holders of Investor Preferred Stock resigns or is unable to serve as a member of the Board, the holders of record of the shares of Investor Preferred Stock shall have the exclusive right, voting together as a separate class, to appoint and elect a director to fill such vacancy. Any appointment or removal of any director pursuant to this Section 6.2(a) shall be effective immediately upon delivery to the Corporation of a notification of the results of the applicable special meeting or upon delivery of the applicable written consent, as the case may be. If the holders of the Investor Preferred Stock fail to appoint a sufficient number of directors to fill all directorships for which they are entitled to appoint directors pursuant to this Section 6.2(a) (including following the removal or resignation of any such director or the inability of any such director to serve on the Board), then any directorship not so filled shall remain vacant until such time as the holders of the Investor Preferred Stock appoint and elect an individual to fill such directorship voting exclusively and together as a separate class, pursuant to the terms of this Section 6.2(a); and no such directorship may be filled other than by the holders of the Investor Preferred Stock, voting exclusively and together as a separate class, pursuant to the terms of this Section 6.2(a). For the avoidance of doubt, the rights provided by this Section 6.2(a) shall not be duplicative of similar rights provided in any other series of Investor Preferred Stock, and the holders of the Investor Preferred Stock, at any time, shall only be entitled to appoint and elect a maximum of four (4) directors of the Corporation pursuant to the designation rights provided by the certificates of designations governing the Investor Preferred Stock.

(b) At all times when the holders of Investor Preferred Stock have a right to appoint at least one (1) director under Section 6.2(a), the holders of Investor Preferred Stock share the right to appoint one non-voting observer to the Board (the “**Board Observer**”). The Board shall permit the Board Observer to attend all meetings of the Board and of any committee thereof as a non-voting observer, in each case to the extent permissible under applicable law or the rules and regulations of any national securities exchange on which the Corporation’s securities are then listed, and will give such individual notice of such meetings at the same time and in the same manner as notice is provided to the members of the Board. The Board Observer shall be entitled to concurrent receipt of any materials provided to the Board or any committee thereof, provided, that the Board Observer shall agree to hold in confidence and trust all information so provided; and provided further, that the Board may withhold any information and exclude the Board Observer from any meeting or portion thereof for any legitimate business or legal reason (as determined in the Board’s sole discretion). The Board will provide expense reimbursement to any Board Observer on the same basis as if such Board Observer were a director of the Corporation. For the avoidance of doubt, the rights provided by this Section 6.2(b) shall not be duplicative of similar rights provided in any other series of Investor Preferred Stock, and the holders of the Investor Preferred Stock, at any time, shall only be entitled to appoint one (1) Board Observer pursuant to the designation rights provided by the certificate of designations governing the Investor Preferred Stock.

(c) At all times when the holders of Investor Preferred Stock have a right to appoint at least one (1) director under Section 6.2(a), the holders of the Investor Preferred Stock shall, by exercise of any warrants issued to such holders pursuant to the Securities Purchase Agreement or conversion of the Investor Preferred Stock, be deemed to have agreed to not vote any shares of Common Stock they receive upon the conversion of any Investor Preferred Stock or the exercise of any warrants issued to such holders pursuant to the Securities Purchase Agreement in any election of directors.

6.3 Preferred Stock Protective Provisions. Until the later of (i) such time when the holders of Investor Preferred Stock shall no longer beneficially own at least 5% of the outstanding capital stock of the Corporation and (ii) five (5) years following the Original Issue Date, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation, domestication, transfer, continuance, recapitalization, reclassification, waiver, statutory conversion, or otherwise, effect or validate any of the following acts or transactions without (in addition to any other vote required by law or the Restated Certificate) the written consent or affirmative vote of a majority of the outstanding shares of preferred stock (the “**Investor Preferred Stock**”) issued pursuant to that certain Securities Purchase Agreement, dated as of June 21, 2024, by and among the Corporation and CCM Denali Equity Holdings, LP (the “**Securities Purchase Agreement**”) or that certain Credit and Guaranty Agreement, dated as of the date hereof, by and among the Corporation, the guarantors party thereto, the various lenders thereto and CCM Denali Debt Holdings, LP, as Administrative Agent and Collateral Agent (the “**Credit Agreement**”), and any such act or transaction that has not been approved by such consent or vote prior to such act or transaction being effected shall be null and void ab initio, and of no force or effect:

(a) liquidate, dissolve or wind-up the business and affairs of the Corporation or effect any event that requires a distribution to the Corporation’s stockholders in accordance with their liquidation preference, or any other merger, consolidation, statutory conversion, transfer, domestication or continuance;

(b) amend, alter, repeal or waive any provision of the Restated Certificate or Bylaws of the Corporation in a manner that would adversely affect the special rights, powers, preferences or privileges of the Preferred Stock (or any series thereof);

(c) create or issue, or obligate itself to issue, shares of, or reclassify, any capital stock of the Corporation other than Excluded Issuances;

(d) increase or decrease the authorized number of shares of Preferred Stock, or create any additional class or series of capital stock of the Corporation (other than increases in the number of the authorized shares of Common Stock); or

(e) purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation, other than (i) redemptions of or dividends or distributions on the Investor Preferred Stock as expressly authorized herein or in the certificate of designations of any Investor Preferred Stock, and (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock;

provided, however, holders of Investor Preferred Stock shall have the right set forth in Section 6.3(b) so long as any shares of Investor Preferred Stock remain outstanding.

SECTION 7. CONVERSION. The shares of Series A-2 Preferred Stock shall not be convertible into shares of Common Stock or any other securities of the Corporation. Notwithstanding the foregoing, on the second (2nd) business day after the date that the Corporation receives the Requisite Stockholder Approval (as defined in the Credit Agreement), each share of Series A-2 Preferred Stock shall convert into a number of shares of Series B-2 Preferred Stock, having the terms and conditions set forth in Exhibit B to the Securities Purchase Agreement, initially convertible into a number of shares of Common Stock equal to the number of shares of Common Stock represented by the Series A-2 Liquidation Value, provided that the holders of Series A-2 Preferred Stock shall have the option to request, in writing, that any portion of the Series A-2 Preferred Stock not be so converted. With respect to any shares of Series A-2 Preferred Stock that remain outstanding after the Corporation receives the Requisite Stockholder Approval (as defined in the Credit Agreement), the Corporation shall be required to convert such shares into shares of Series B-2 Preferred Stock pursuant to this Section 7 within five (5) business days of receiving a written request (which may be by electronic mail) from the holders of such shares. The Series B-2 Preferred Stock shall have substantively similar terms to the Series A-2 Stock, except that the Series B-2 Preferred Stock shall be convertible into Common Stock, and include conversion and antidilution terms related thereto, shall provide the holders thereof certain pre-emptive rights to participate in future offerings of equity securities by the Corporation and shall include a provision that limits the beneficial ownership of the holders thereof (together with any group of which such holders are a member) to no more than 49.9% (the “**Beneficial Ownership Limitation**”) of the number of shares of Common Stock then issued and outstanding, all as set forth in Exhibit B to the Securities Purchase Agreement. Notwithstanding the foregoing, by written notice to the Corporation, any holder may amend the Beneficial Ownership Limitation percentage with respect to such holder to any percentage that is lower than or equal to 49.9%.

SECTION 8. REDEMPTION.

8.1 Redemption and Redemption Price. At any time after the fifth anniversary of the Original Issue Date, any holder of the shares of Series A-2 Preferred Stock may, at its option, require the Corporation to redeem the Series A-2 Preferred Stock, in whole or in part, owned by such holder at the Redemption Price (as defined below); provided, however, that the Corporation shall not redeem or be required to redeem any shares of Series A-2 Preferred Stock or give notice of any redemption unless the Corporation has sufficient and lawful funds to redeem the shares to be redeemed. The redemption price of the Series A-2 Preferred Stock shall be an amount per share equal to the greater of (i) the Original Issue Price plus all accrued and unpaid dividends thereon, up to and including the Redemption Date and (ii) the number of shares of Common Stock represented by the Series A-2 Liquidation Value multiplied by the average of the closing sale price of the Common Stock for the five (5) Business Days immediately prior to the Redemption Date plus all accrued and unpaid dividends thereon, up to and including the Redemption Date (the “**Redemption Price**”). The Redemption Price must be paid in cash.

8.2 Redemption Notice. A holder of Series A-2 Preferred Stock shall, not less than thirty (30) days nor more than sixty (60) days prior to the date of redemption, give written notice to the Corporation of the shares of Series A-2 Preferred Stock required to be redeemed. For purposes of this Certificate of Designation, the date upon which a holder of Series A-2 Preferred Stock desires the redemption to take effect, shall be the “**Redemption Date**,” and the written notice given by a holder of Series A-2 Preferred Stock to the Corporation in connection with such redemption, shall be the “**Redemption Notice**.” The Redemption Notice shall state the total number of shares required by the holder of Series A-2 Preferred Stock to be redeemed and the Redemption Date. Promptly following receipt of a Redemption Notice given by a holder of Series A-2 Preferred Stock, the Corporation shall notify such holder of the time, place and manner in which the holder is to surrender to the Corporation the certificate or certificates representing the shares of Series A-2 Preferred Stock required to be redeemed.

8.3 Payment of Redemption Price and Surrender of Stock. On the Redemption Date, the Redemption Price of the Series A-2 Preferred Stock required by the holder thereof to be redeemed shall be payable to the holder(s) of the Series A-2 Preferred Stock being so redeemed. On or before the Redemption Date, each holder of Series A-2 Preferred Stock required by the holder thereof to be redeemed shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the notice of the Corporation described in Section 8.2 above, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be cancelled and retired.

8.4 Termination of Rights. If the Redemption Notice is duly given, and if at least ten (10) days prior to the Redemption Date the Redemption Price is either paid or made available for payment through the arrangement specified in Section 8.5 below, then notwithstanding that the certificates evidencing any of the shares of Series A-2 Preferred Stock so called for redemption by the Corporation or required by a holder thereof to be redeemed, as the case may be, have not been surrendered, all rights with respect to such shares shall forthwith after the Redemption Date cease, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificates therefor.

8.5 Deposit of Funds. At least ten (10) days prior to the Redemption Date, the Corporation may, but shall not be obligated to, deposit with any bank or trust company in San Francisco, California, having a capital and surplus of at least \$1 billion as a trust fund, a sum equal to the aggregate Redemption Price of all shares of the Series A-2 Preferred Stock called for redemption by the Corporation or required by a holder thereof to be redeemed, as the case may be, and not yet redeemed, with irrevocable instructions and authority to the bank or trust company to pay, on or after the Redemption Date or prior thereto, the Redemption Price to the respective holders upon the surrender of their share certificates. The deposit, if made, shall constitute full payment of the shares of Series A-2 Preferred Stock to their holders, and from and after the date of such deposit (even if prior to the Redemption Date), the shares of Series A-2 Preferred Stock shall be deemed to be redeemed and no longer outstanding, and the holders thereof shall cease to be shareholders with respect to such shares and shall have no rights with respect thereto, except the right to receive from the bank or trust company payment of the Redemption Price of the shares, without interest, upon surrender of their certificates therefor. Any monies so deposited and unclaimed at the end of one (1) year from the Redemption Date shall be released or repaid to the Corporation, after which the holders of shares of Series A-2 Preferred Stock called for redemption by the Corporation or required by a holder thereof to be redeemed, as the case may be, shall be entitled to receive payment of the Redemption Price only from the Corporation.

SECTION 9. ANTI-DILUTION ADJUSTMENTS.

9.1 Stock Dividends, Splits, Etc. If the Corporation declares or pays a dividend or distribution on the outstanding shares of Common Stock or securities convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock (“**Convertible Securities**”) then the Series A-2 Liquidation Value of each share of Series A-2 Preferred Stock shall be increased by the total shares of Common Stock issued (or issuable in the case of Convertible Securities) that would have been issued to a holder of the number of shares of Common Stock equal to the number of shares of Common Stock represented by the Series A-2 Liquidation Value immediately prior to such dividend or distribution. If the Corporation subdivides the Common Stock by reclassification or otherwise into a greater number of shares, the number of shares of Common Stock represented by the Series A-2 Liquidation Value shall be proportionately increased, provided the Original Issue Price shall remain the same. If the outstanding shares of the Common Stock are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Series A-2 Liquidation Value shall be proportionately decreased, provided the Original Issue Price shall remain the same.

9.2 Reclassification, Exchange, Combinations or Substitution. Upon any event whereby all of the outstanding shares of Common Stock are reclassified, exchanged, combined, substituted, or replaced for, into, with or by Corporation securities of a different class and/or series, then from and after the consummation of such event, the Series A-2 Liquidation Value should be equal to the number, class and series of Corporation securities that a holder of the number of shares of Common Stock equal to the Series A-2 Liquidation Value immediately prior to such reclassification, exchange, combination or substitution would have received, provided the Original Issue Price shall remain the same, subject to further adjustment thereafter from time to time in accordance with the provisions hereof. The provisions of this Section 9.2 shall similarly apply to successive reclassifications, exchanges, combinations, substitutions, replacements or other similar events.

9.3 Adjustment for Issuance of Applicable Shares. If the Corporation shall issue or sell any shares of Common Stock (other than shares included in the Excluded Issuances, as defined below) (“**Applicable Shares**”), or options, warrants, or Convertible Securities or similar instruments exercisable or otherwise convertible or exchangeable for Applicable Shares, in each case without consideration or for a consideration per share initially deliverable upon issuance, conversion or exchange of such securities less than the quotient of the then applicable Original Issue Price divided by the number of shares of Common Stock represented by the then applicable Series A-2 Liquidation Value, as may be adjusted to account for stock splits, stock combinations, stock dividends or other distributions and recapitalizations affecting the Common Stock (the “**Original Issue Price Per Share**”), then effective immediately upon such issuance or sale, the Series A-2 Liquidation Value immediately prior to any such issuance or sale shall be increased, and shall not be reduced, in accordance with the following formula:

$$LV_1 = LV_0 \times [(OS + D) / (OS + PS)]$$

LV₁ = new number of shares of Common Stock equal to the Series A-2 Liquidation Value

LV₀ = then applicable number of shares of Common Stock equal to the Series A-2 Liquidation Value

OS = the number of shares of Common Stock outstanding immediately prior to the issuance of such securities

D = the maximum number of shares of Common Stock deliverable upon issuance of such securities

PS = the aggregate number of shares of Common Stock which the aggregate amount of consideration received by the Corporation upon such issuance or sale would have purchased at the Original Issue Price Per Share.

9.4 Exceptions to Adjustments. Except as specifically provided for herein, there shall be no adjustment or readjustment to the Series A-2 Liquidation Value in the following circumstances (each of the following, an “**Excluded Issuance**”): (1) securities issued to the Corporation’s lenders pursuant to the Credit Agreement or Securities Purchase Agreement or upon the exercise of warrants or conversion of preferred stock issued to the Corporation’s lenders pursuant to the Credit Agreement or Securities Purchase Agreement; (2) upon conversion, exercise or exchange of securities, including convertible debt securities and convertible debt securities issued as payment-in-kind interest thereon, outstanding prior to the date of this Certificate of Designation without alteration; (3) pursuant to agreements in effect as of date of this Certificate of Designation (provided that such agreements are not amended, amended and restated, modified or supplemented after the date of this Certificate of Designation to increase the number of securities, reduce the consideration payable in connection with such securities, or otherwise change the terms of such agreements so as to have a dilutive effect on this Certificate of Designation (or any securities issued or issuable hereunder)); (4) the issuance of Common Stock (or options or other similar instruments convertible into Common Stock) to the Corporation’s management, directors or other service providers pursuant to compensation and incentive programs approved by the Board; and (5) the issuance of Common Stock pursuant to any registered offering of Common Stock or a private placement of Common Stock in accordance with the exemptions provided under Section 4(a)(2) of the Securities Act, as amended, each as principally for bona fide equity financing purposes; provided, however, that clause (5) of the definition of Excluded Issuance shall only be an Excluded Issuance for the purposes of Section 6.3(c) of this Certificate of Designation (and, for the avoidance of doubt, not an “Excluded Issuance” for any other purposes (including, without limitation, any anti-dilution adjustments in this Certificate of Designation)).

9.5 Expiration of Securities. Upon the expiration or termination of any unexercised options, warrants, or Convertible Securities or similar instruments exercisable or otherwise convertible or exchangeable for Applicable Shares (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Series A-2 Liquidation Value, the Series A-2 Liquidation Value shall be readjusted to such Series A-2 Liquidation Value as would have been in effect had such options, warrants, or Convertible Securities or similar instruments exercisable or otherwise convertible or exchangeable for Applicable Shares (or portion thereof) never been issued.

9.6 Reserved.

9.7 Certain Events. If any event of the type contemplated by the provisions of this Section 9.7 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features) occurs, then the Board shall make an appropriate adjustment in the number of the Series A-2 Liquidation Value so as to protect the rights of the holders of the Series A-2 Preferred Stock in a manner consistent with the provisions of this Section; provided, that no such adjustment pursuant to this Section 9.7 shall decrease the Original Issue Price or decrease the Series A-2 Liquidation Value.

9.8 Calculations. All calculations under this Section 9.8 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 9.8, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

9.9 Notice of Adjustments. Whenever the Series A-2 Liquidation Value is adjusted as provided under this Section 9, the Corporation shall, as soon as reasonably practicable following the occurrence of an event that requires such adjustment (or if the Corporation is not aware of such occurrence, as soon as reasonably practicable after becoming so aware), provide a written notice to the holders of the Series A-2 Preferred Stock of the occurrence of such event and a statement in reasonable detail setting forth the method by which the adjustment to the applicable Series A-2 Liquidation Value was determined and setting forth the adjusted applicable Series A-2 Liquidation Value.

SECTION 10. NO RE-ISSUANCE OF PREFERRED STOCK. No shares of Series A-2 Preferred Stock redeemed, purchased or acquired by the Corporation shall be reissued, and all such shares shall be canceled and eliminated from the shares the Corporation shall be authorized to issue.

SECTION 11. AMENDMENT, SUPPLEMENT AND WAIVER. Without the consent of a majority of holders of the Series A-2 Preferred Stock, the Corporation may amend or supplement this Certificate of Designation to make any change that would grant any additional rights or benefits to the holders of the Series A-2 Preferred Stock or that does not affect the legal rights under this Certificate of Designation of any such holder.

SECTION 12. LOST OR MUTILATED SERIES A-2 PREFERRED STOCK CERTIFICATE. If a holder's Series A-2 Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Series A-2 Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership thereof, reasonably satisfactory to the Corporation and, in each case, customary and reasonable indemnity, if requested. Applicants for a new certificate under such circumstances shall also comply with such other reasonable regulations and procedures as the Corporation may prescribe.

SECTION 13. NO IMPAIRMENT. The Corporation will not, by amendment of its Restated Certificate or Bylaws or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Certificate of Designation and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders against impairment.

SECTION 14. SEVERABILITY. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

SECTION 15. DISPUTE RESOLUTION.

15.1 Submission to Dispute Resolution. In the case of a dispute relating to an Original Issuance Price, a Redemption Price, a Series A-2 Liquidation Value and fair market value or any other computation to be made hereunder (each of the foregoing a “**Disputed Calculation**” and together the “**Disputed Calculations**”) or the arithmetic calculation of any of the foregoing (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Corporation or the applicable holder (as the case may be) (the “**Disputing Party**”) shall notify the other party (the “**Responding Party**”) of the dispute via electronic mail (A) if by the Corporation, within two (2) Business Days after the occurrence of the circumstances giving rise to such dispute or (B) if by such holder at any time after such holder learned of the circumstances giving rise to such dispute. If the Disputing Party and the Responding Party are unable to promptly resolve such dispute relating to such Disputed Calculation, or the arithmetic calculation of such Disputed Calculation (as the case may be), at any time after the fifth (5th) Business Day following such initial notice by the Disputing Party to the Responding Party, then the Disputing Party may select and submit to the Responding Party via electronic email a list of independent, reputable investment banks to resolve such dispute (the “**Disputing Party’s Selection List**”). If the Responding Party objects to all such independent, reputable investment banks included in the Disputing Party’s Selection List, then the Responding Party may submit to the Disputing Party via electronic mail an alternative list of independent, reputable investment banks (the “**Responding Party’s Selection List**”) within ten (10) Business Days of receiving the Disputing Party’s Selection List. If the Disputing Party objects to all such independent, reputable investment banks on the Responding Party’s Selection List, then the Disputing Party must notify the Responding Party via electronic mail of such objection within ten (10) Business Days of receiving the Responding Party’s Selection List (the “**Selection Deadline**”). Following which, each of the Disputing Party and the Responding Party shall select an independent, reputable investment bank within five (5) Business Days of the Selection Deadline (the “**Alternative Selection Deadline**”), and the two selected independent, reputable investment banks shall have five (5) Business Days from the Alternative Selection Deadline to select a third independent, reputable investment bank to resolve the dispute (the “**Final Selection Deadline**”). The Disputing Party and the Responding Party shall take all such reasonable steps necessary to jointly engage the appointed bank as shortly thereafter as reasonably possible, and in any event, within ten (10) Business Days of the Final Selection Deadline.

15.2 The Disputing Party and the Responding Party shall each deliver to the investment bank engaged pursuant to the procedures set forth in Section 15.1 (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of Section 15.1 and (B) written documentation supporting such respective party’s position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which such investment bank was engaged (the “**Dispute Submission Deadline**”) (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the “**Required Dispute Documentation**”) (it being understood and agreed that if either the Disputing Party and the Responding Party fails to raise any claims in the Required Dispute Documentation it submits by the Dispute Submission Deadline, then the party who fails to raise such claim in the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) raise such claim to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the claims raised in the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Disputing Party and the Responding Party or otherwise requested by such investment bank, neither the Disputing Party nor the Responding Party shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

15.3 The Disputing Party and the Responding Party shall use their reasonable best efforts to cause the investment bank engaged pursuant to Section 15.1 to determine the resolution of such dispute and notify the Disputing Party and the Responding Party of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne solely by the Corporation, and such investment bank’s resolution of such dispute shall be final and binding upon all parties absent manifest error.

15.4 Notwithstanding anything to the contrary set forth in this Section 15, nothing in this Section 15 shall limit a holder’s right to pursue any and all remedies available to it, at law, in equity or otherwise, including, without limitation, any action seeking the entry of an order specifically enforcing the terms and conditions hereof, granting injunctive relief and/or awarding damages arising from any breach or threatened breach of this Section 15 or any other Section hereof. Any holder may choose to seek an alternative remedy in lieu of or in addition to effectuating the dispute resolution procedures provided in this Section 15 by providing written notice to the Corporation of its intent to do so at any time prior to the Selection Deadline.

SECTION 16. CORPORATE OPPORTUNITIES. Notwithstanding anything contained herein or in any other Transaction Documents (as defined in the Securities Purchase Agreement), each of the holders of Investor Preferred Stock, any of their respective Affiliates and any of its or their respective directors, officers, employees and consultants, including any director appointed to the Board pursuant to Section 6.2(a) (collectively, the “***Investor Related Parties***”), may freely offer to any other Person or effect on behalf of itself or any other Person any other investment or business opportunity or prospective economic advantage, including those competitive with the business of the Corporation, or other transactions in which the Corporation, its subsidiaries, any member of the Board or any other shareholder of the Corporation may have an interest or expectancy, including as a result of any fiduciary duties applicable to such Person (“***Investor Transactions***”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, such Investor Related Party expressly and solely in such Investor Related Party’s capacity as a director of the Corporation, in each case without any prior Corporation, Board or stockholder notification or approval; provided, that if the Corporation, to the Investor Related Party’s knowledge, is considering the same Investor Transaction, the Investor Related Party will promptly notify the Corporation of its interest in such Investor Transaction and cause each member of the Board that is an Investor Related Party to recuse himself from all Board discussions and activities relating to such Investor Transaction. Without limiting the generality of the foregoing, the Corporation agrees and acknowledges that Investor Related Parties and their respective Affiliates may have both passive and non-passive interests in Persons deemed competitors of the Corporation, and that the provisions of the immediately preceding sentence shall be applicable to such competitors, their respective Affiliates and any of their respective directors, officers and employees in respect thereof. Any person or entity purchasing, holding or otherwise acquiring any interest in any shares of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Section 16.

[Signature Page Follows]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation to be executed by the below named officer of the Corporation.

Dated: August 29, 2024

EOS ENERGY ENTERPRISES, INC.
a Delaware corporation

By: /s/ Michael Silberman

Name: Michael Silberman

Title: Secretary

For release



Eos Energy Achieves First Performance Milestones Related to Cerberus Strategic Investment

\$30 million tranche further strengthens the Company's balance sheet as Eos expands manufacturing operations in Turtle Creek

TURTLE CREEK, Pa., August 29, 2024 — Eos Energy Enterprises, Inc. (NASDAQ: EOSE) (“Eos” or the “Company”), a leading provider of safe, scalable, efficient, and sustainable zinc-based long duration energy storage systems, today announced the successful achievement of all four of the first performance milestones previously agreed upon between Eos and an affiliate of Cerberus Capital Management LP (“Cerberus”) as part of Cerberus’s strategic investment in the Company. Achieving these specific performance milestones allows the Company to draw an additional \$30 million on the Delayed Draw Term Loan from Cerberus to fund ongoing operations and production expansion to meet the growing demand for long duration energy storage solutions.

The achieved milestones include objectives related to the Company’s automated production line, materials cost-out, improvements in Z3 technology performance and backlog/cash conversion. Among the key accomplishments, Eos has successfully achieved production cycle times of less than 10 seconds while exceeding first pass yield targets in the high 90s on its first state-of-the-art battery manufacturing line, a significant milestone that positions the company for future profitability.

“The team continues to execute on our operational targets and today’s announcement is a testament to their effort and focus,” said Nathan Kroeker, Eos Chief Financial Officer. “The partnership with Cerberus is demonstrating its strategic value as we execute our growth plans and bring a commercially scalable and ready alternative to market to meet the emerging need for longer duration energy storage that is safe, secure and manufactured in the US.”

The remaining two tranches may be drawn in the amounts of \$65 million and \$40.5 million, respectively, following the October 31, 2024, and January 31, 2025, testing dates upon the achievement of the applicable performance milestones.

Special Stockholder Meeting

The Company will hold a virtual Special Meeting of Stockholders on September 10, 2024, at 10:00 a.m. Eastern Time where stockholders will be asked to consider and vote on two important proposals related to Cerberus’s strategic investment in the Company that are crucial to the company’s strategic growth.

The Board of Directors recommends that stockholders vote **FOR** the Issuance Cap Proposal and **FOR** the Adjournment Proposal.

Only stockholders of record as of the close of business on July 31, 2024, are entitled to vote. You can vote online, by telephone, or by mailing your proxy card. For more detailed instructions on how to vote, please refer to the proxy materials sent to you or contact Eos’ Investor Relations at ir@eose.com. Your voice as a stockholder remains crucial in shaping the future of Eos, and every vote counts.

Eos. Positively ingenious.

Please consider the environment before printing.

About Eos Energy Enterprises

Eos Energy Enterprises, Inc. is accelerating the shift to clean energy with positively ingenious solutions that transform how the world stores power. Our breakthrough Znyth™ aqueous zinc battery was designed to overcome the limitations of conventional lithium-ion technology. It is safe, scalable, efficient, sustainable, manufactured in the U.S., and the core of our innovative systems that today provides utility, industrial, and commercial customers with a proven, reliable energy storage alternative for 3 to 12-hour applications. Eos was founded in 2008 and is headquartered in Edison, New Jersey. For more information about Eos (NASDAQ: EOSE), visit eose.com.

Contacts

Investors: ir@eose.com
Media: media@eose.com

Important Information and Where You Can Find It

This press release may be deemed to be solicitation material in respect of a vote of stockholders to approve the issuance of more than 19.99% of the outstanding common stock under the warrants and the convertibility of preferred stock issued or issuable as part of the financing transaction entered into on June 21, 2024 (the “Financing”). In connection with the requisite stockholder approval, Eos filed on August 8, 2024, a definitive proxy statement (the “Definitive Proxy Statement”), which is available at the SEC’s website (<http://www.sec.gov>) and has been sent to the stockholders of Eos, seeking certain approvals related to the exercisability of the warrants and the convertibility of the preferred stock issued or issuable pursuant to the Financing.

INVESTORS AND SECURITY HOLDERS OF EOS AND THEIR RESPECTIVE AFFILIATES ARE URGED TO READ THE DEFINITIVE PROXY STATEMENT AND ANY OTHER RELEVANT DOCUMENTS FILED OR TO BE FILED WITH THE SEC IN CONNECTION WITH THE FINANCING, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THOSE DOCUMENTS, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT EOS AND THE FINANCING. Investors and security holders will be able to obtain a free copy of the proxy statement, as well as other relevant documents filed with the SEC containing information about Eos, without charge, at the SEC’s website (<http://www.sec.gov>). Copies of documents filed with the SEC can also be obtained, without charge, by directing a request to Investor Relations, Eos Energy Enterprises, Inc. at 862-207-7955 or email ir@eose.com.

Participants in the Solicitation of Proxies in Connection with Financing

Eos and certain of its respective directors, executive officers and employees may be deemed under the rules of the SEC to be participants in the solicitation of proxies with respect to the requisite stockholder approval related to the Financing. Information regarding Eos directors and officers is available in (i) its definitive proxy statement for the 2024 annual stockholders meeting, which was filed with the SEC on April 2, 2024, and (ii) its current reports on Form 8-K filed by Eos on June 24, 2024, and July 29, 2024. Other information regarding the participants in the solicitation of proxies in respect to the Financing and the description of their direct and indirect interests, as security holders or otherwise, is contained in the Definitive Proxy Statement and other relevant materials to be filed by Eos with the SEC. Free copies of these documents, when available, may be obtained as described in the preceding paragraph.

Forward Looking Statements

Except for the historical information contained herein, the matters set forth in this press release are forward-looking statements within the meaning of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements include, but are not limited to, statements regarding our expected revenue, contribution margins, orders backlog and opportunity pipeline for the fiscal year ended December 31, 2024, our path to profitability and strategic outlook, the tax credits available to our customers or to Eos pursuant to the Inflation Reduction Act of 2022, the delayed draw term loan, milestones thereunder and the anticipated use of proceeds therefrom, the ability to draw under the delayed draw term loan, statements regarding our ability to secure final approval of a loan from the Department of Energy LPO, or our anticipated use of proceeds from any loan facility provided by the US Department of Energy, statements that refer to outlook, projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions. The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intends,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “would” and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Forward-looking statements are based on our management’s beliefs, as well as assumptions made by, and information currently available to, them. Because such statements are based on expectations as to future financial and operating results and are not statements of fact, actual results may differ materially from those projected.

Factors which may cause actual results to differ materially from current expectations include, but are not limited to: changes adversely affecting the business in which we are engaged; our ability to forecast trends accurately; our ability to generate cash, service indebtedness and incur additional indebtedness; our ability to achieve the operational milestones on the delayed draw term loan; our ability to raise financing in the future, including the discretionary revolving facility from Cerberus; our customers’ ability to secure project financing; the amount of final tax credits available to our customers or to Eos pursuant to the Inflation Reduction Act, uncertainties around our ability to meet the applicable conditions precedent and secure final approval of a loan, in a timely manner or at all from the Department of Energy, Loan Programs Office, or the timing of funding and the final size of any loan that is approved; the possibility of a government shutdown while we work to meet the applicable conditions precedent and finalize loan documents with the U.S. Department of Energy Loan Programs Office or while we await notice of a decision regarding the issuance of a loan from the Department Energy Loan Programs Office; our ability to continue to develop efficient manufacturing processes to scale and to forecast related costs and efficiencies accurately; fluctuations in our revenue and operating results; competition from existing or new competitors; our ability to convert firm order backlog and pipeline to revenue; risks associated with security breaches in our information technology systems; risks related to legal proceedings or claims; risks associated with evolving energy policies in the United States and other countries and the potential costs of regulatory compliance; risks associated with changes to the U.S. trade environment; risks resulting from the impact of global pandemics, including the novel coronavirus, Covid-19; our ability to maintain the listing of our shares of common stock on NASDAQ; our ability to grow our business and manage growth profitably, maintain relationships with customers and suppliers and retain our management and key employees; risks related to the adverse changes in general economic conditions, including inflationary pressures and increased interest rates; risk from supply chain disruptions and other impacts of geopolitical conflict; changes in applicable laws or regulations; the possibility that Eos may be adversely affected by other economic, business, and/or competitive factors; other factors beyond our control; risks related to adverse changes in general economic conditions; and other risks and uncertainties.

The forward-looking statements contained in this press release are also subject to additional risks, uncertainties, and factors, including those more fully described in the Company’s most recent filings with the SEC, including the Company’s most recent Annual Report on Form 10-K and subsequent reports on Forms 10-Q and 8-K. Further information on potential risks that could affect actual results will be included in the subsequent periodic and current reports and other filings that the Company makes with the SEC from time to time. Moreover, the Company operates in a very competitive and rapidly changing environment, and new risks and uncertainties may emerge that could have an impact on the forward-looking statements contained in this press release.

Forward-looking statements speak only as of the date they are made. Readers are cautioned not to put undue reliance on forward-looking statements, and, except as required by law, the Company assumes no obligation and does not intend to update or revise these forward-looking statements, whether as a result of new information, future events, or otherwise.