

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

**FORM S-8
REGISTRATION STATEMENT**
*Under
The Securities Act of 1933*

Fluence Energy, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

87-1304612
(I.R.S. Employer
Identification No.)

4601 Fairfax Drive, Suite 600
Arlington, Virginia 22203
(Address of principal executive offices) (Zip code)

Fluence Energy, Inc. 2021 Incentive Award Plan
Fluence Energy, LLC Phantom Equity Incentive Plan
2020 Unit Option Plan of Fluence Energy, LLC
(Full title of the plans)

Manuel Perez Dubuc
Chief Executive Officer
4601 Fairfax Drive, Suite 600
Arlington, Virginia 22203
Telephone: (833) 358-3623
(Name, address and telephone number, including area code, of agent for service)

Copies to:

Senet S. Bischoff
Alison A. Haggerty
Latham & Watkins LLP
1271 Avenue of Americas
New York, New York 10020
Telephone: (212) 906-1200
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Dennis Fehr
Chief Financial Officer
Francis A. Fuselier
General Counsel
4601 Fairfax Drive, Suite 600
Arlington, Virginia 22203
Telephone: (833) 358-3623

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 "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act of 1934, as amended (the "Exchange Act").

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price	Proposed Maximum Aggregate	Amount of Registration Fee

		Per Share	Offering Price	
Class A common stock, par value \$0.00001 per share				
Fluence Energy, Inc. 2021 Incentive Award Plan	9,500,000 (2)	\$28.00(3)	\$266,000,000.00	\$24,658.20
Fluence Energy, LLC Phantom Equity Incentive Plan	2,220,968 (4)	\$28.00(3)	\$62,187,104.00	\$5,764.74
2020 Unit Option Plan of Fluence Energy, LLC	12,267,403 (5)	\$2.45(6)	\$30,055,137.35	\$2,786.12
Total	23,988,371	¾	\$358,242,241.35	\$33,209.06

- (1) Pursuant to Rule 416(a) and Rule 416(b) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover additional shares of the Company’s Class A common stock, par value \$0.00001 per share (“Common Stock”), which may become issuable under the Fluence Energy, Inc. 2021 Incentive Award Plan (the “2021 Plan”), the Fluence Energy, LLC Phantom Equity Incentive Plan (the “Phantom Plan”) and the 2020 Unit Option Plan of Fluence Energy, LLC (the “Option Plan”) by reason of any stock split, stock dividend, recapitalization, or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of Common Stock.
- (2) Represents 9,500,000 shares of Common Stock available for future issuance under the 2021 Plan.
- (3) Pursuant to Rule 457(h) of the Securities Act of 1933, and solely for the purposes of calculating the amount of the registration fee, the proposed maximum offering price is based on the initial public offering price of Common Stock.
- (4) Represents 2,220,968 shares of Common Stock reserved for issuance for settlement of awards previously granted under the Phantom Plan.
- (5) Represents 12,267,403 shares of Common Stock reserved for issuance upon the exercise of previously granted stock options that remain outstanding under the Option Plan.
- (6) Estimated in accordance with Rule 457(h) of the Securities Act solely for purposes of calculating the amount of the registration fee, the proposed maximum offering price is based on the exercise price of previously granted stock options that remain outstanding under the Option Plan.
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PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information called for in Part I of Form S-8 is not being filed with or included in this Registration Statement (by incorporation by reference or otherwise) in accordance with the rules and regulations of the Securities and Exchange Commission (the "Commission").

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed with the Commission by Fluence Energy, Inc. (the "Company") are hereby incorporated by reference in, and shall be deemed to be a part of, this Registration Statement:

- (a) [Amendment No. 1 to the Company's Registration Statement on Form S-1 \(File No. 333-259839\) filed with the Commission on October 19, 2021, which contains the audited financial statements for the Company's fiscal year ended September 30, 2020;](#)
- (b) The Company's prospectus, dated October 27, 2021, to be filed with the Commission pursuant to Rule 424(b) promulgated under the Securities Act, in connection with the Company's Registration Statement on Form S-1 (File No. 333-259839); and
- (c) [The description of the Common Stock contained in the Company's Registration Statement on Form 8-A \(File No. 001-40978\) filed with the Commission on October 28, 2021, pursuant to the Exchange Act, and any amendment or report filed for the purpose of updating such description.](#)

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all such securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents.

Any statement contained in this Registration Statement, in an amendment hereto or 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 amendment to this Registration Statement or in any document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement, except as to such specific section of such statements as set forth therein.

Under no circumstances shall any information furnished under Item 2.02 or 7.01 of Form 8-K be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 102(b)(7) of the General Corporation Law of the State of Delaware permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase or redemption in violation of Delaware corporate law or obtained an improper personal benefit. The Company's amended and restated certificate of incorporation provides that no director of the Company shall be personally liable to it or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability, except to the extent that the General Corporation Law of the State of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty.

Section 145 of the General Corporation Law of the State of Delaware provides that a corporation has the power to indemnify a director, officer, employee, or agent of the corporation, or a person serving at the request of the corporation for another corporation, partnership, joint venture, trust or other enterprise in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he was or is a party or is threatened to be made a party to any threatened, ending or completed action, suit or proceeding by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

The Company's amended and restated certificate of incorporation and amended and restated bylaws provide indemnification for the Company's directors and officers to the fullest extent permitted by the General Corporation Law of the State of Delaware. The Company indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding (other than an action by or in the right of the Company) by reason of the fact that he or she is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at the Company's request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit, or proceeding and any appeal therefrom, if such Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the Company's best interests, and, with respect to any criminal action or proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful. The Company's amended and restated certificate of incorporation and amended and restated bylaws provide that the Company will indemnify any Indemnitee who was or is a party to an action or suit by or in the right of the Company to procure a judgment in the Company's favor by reason of the fact that the Indemnitee is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at the Company's request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred in connection with such action, suit, or proceeding, and any appeal therefrom, if the Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the Company's best interests, except that no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the Company, unless a court determines that, despite such adjudication but in view of all of the circumstances, he or she is entitled to indemnification of such expenses. Notwithstanding the foregoing, to the extent that any Indemnitee has been successful, on the merits or otherwise, he or she will be indemnified by the Company against all expenses (including attorneys' fees) actually and reasonably incurred in connection therewith. Expenses must be advanced to an Indemnitee under certain circumstances.

The Company has entered into separate indemnification agreements with each of its directors and executive officers. Each indemnification agreement provides, among other things, for indemnification to the fullest extent permitted by law against any and all expenses, judgments, fines, penalties, and amounts paid in settlement of any claim. The indemnification agreements provide for the advancement or payment of all expenses to the indemnitee and for the reimbursement to the Company if it is found that such indemnitee is not entitled to such indemnification under applicable law and the Company's amended and restated certificate of incorporation and amended and restated bylaws.

The Company maintains a general liability insurance policy that covers certain liabilities of directors and officers of the corporation arising out of claims based on acts or omissions in their capacities as directors or officers.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit Number	Description of Exhibit
4.1	Form of Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.2 to the Company's Registration Statement on Form S-1 (File No. 333-259839), filed on October 19, 2021 with the Commission).
4.2	Form of Amended and Restated Bylaws of the Company (incorporated by reference to Exhibit 3.4 to the Company's Registration Statement on Form S-1 (File No. 333-259839), filed on October 19, 2021 with the Commission).
5.1+	Opinion of Latham & Watkins LLP.
23.1+	Consent of Ernst & Young LLP.
23.2+	Consent of Latham & Watkins LLP (included in Exhibit 5.1).
24.1+	Power of Attorney (included on signature page).
99.1	Fluence Energy, Inc. 2021 Incentive Award Plan (incorporated by reference to Exhibit 10.5 to the Company's Registration Statement on Form S-1 (File No. 333-259839), filed on October 19, 2021 with the Commission).
99.2	Fluence Energy, LLC Phantom Equity Incentive Plan and Form Phantom Unit Award Agreement thereunder (incorporated by reference to Exhibit 10.8 to the Company's Registration Statement on Form S-1 (File No. 333-259839), filed on September 28, 2021 with the Commission).
99.3	2020 Unit Option Plan of Fluence Energy, LLC and Form Unit Option Award Agreement thereunder (incorporated by reference to Exhibit 10.7 to the Company's Registration Statement on Form S-1 (File No. 333-259839), filed on September 28, 2021 with the Commission).

+ Filed herewith

Item 9. Undertakings.

(a) The undersigned Company hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the Registration Statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Company pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Company hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Company 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 Arlington, Virginia, on the 28th day of October, 2021.

Fluence Energy

By: /s/ Manuel Perez Dubuc
Manuel Perez Dubuc
Principal Executive Officer

SIGNATURES AND POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints each of Manuel Perez Dubuc, Dennis Fehr and Francis A. Fuselier, acting alone or together with another attorney-in-fact, as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in his or her name, place and stead, and in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and every act and thing requisite or necessary to be done in and about the premises, as fully and to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, 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 Act, this registration statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
<u>/s/Manuel Perez Dubuc</u> Manuel Perez Dubuc	Chief Executive Officer and Director (Principal Executive Officer)	October 28, 2021
<u>/s/Dennis Fehr</u> Dennis Fehr	Chief Financial Officer (Principal Financial Officer)	October 28, 2021
<u>/s/Amrita Chatterjee</u> Amrita Chatterjee	Corporate Controller (Principal Accounting Officer)	October 28, 2021
<u>/s/Julian Nebreda</u> Julian Nebreda	Director	October 28, 2021
<u>/s/Lisa Krueger</u> Lisa Krueger	Director	October 28, 2021
<u>/s/Barbara Humpton</u> Barbara Humpton	Director	October 28, 2021
<u>/s/Emma Falck</u> Emma Falck	Director	October 28, 2021

Signature	Title	Date
<u>/s/Axel Meier</u> Axel Meier	Director	October 28, 2021
<u>/s/Chris Shelton</u> Chris Shelton	Director	October 28, 2021
<u>/s/Simon Smith</u> Simon Smith	Director	October 28, 2021
<u>/s/Elizabeth Fessenden</u> Elizabeth Fessenden	Director	October 28, 2021
<u>/s/ Cynthia Arnold</u> Cynthia Arnold	Director	October 28, 2021
<u>/s/ Herman Bulls</u> Herman Bulls	Director	October 28, 2021
<u>/s/Harald von Heynitz</u> Harald von Heynitz	Director	October 28, 2021

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LATHAM & WATKINS LLP

October 28, 2021

Fluence Energy, Inc.
 4601 Fairfax Drive, Suite 600
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FIRM / AFFILIATE OFFICES

Austin	Milan
Beijing	Moscow
Boston	Munich
Brussels	New York
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Chicago	Paris
Dubai	Riyadh
Düsseldorf	San Diego
Frankfurt	San Francisco
Hamburg	Seoul
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

Re: Registration Statement on Form S-8 with respect to 23,988,371 shares of Class A common stock, par value \$0.00001 per share

Ladies and Gentlemen:

We have acted as special counsel to Fluence Energy, Inc., a Delaware corporation (the “**Company**”), in connection with the preparation and filing by the Company on the date hereof with the Securities and Exchange Commission (the “**Commission**”) of a Registration Statement (the “**Registration Statement**”) on Form S-8 under the Securities Act of 1933, as amended (the “**Act**”), relating to the issuance of up to 23,988,371 shares of Class A common stock of the Company, par value \$0.00001 per share (the “**Shares**”), which may be issued pursuant to the Fluence Energy, Inc. 2021 Incentive Award Plan (the “**Incentive Plan**”), the Fluence Energy, LLC Phantom Equity Incentive Plan (the “**Phantom Plan**”) and the 2020 Unit Option Plan of Fluence Energy, LLC (the “**Unit Option Plan**”) and, together with the Incentive Plan and the Phantom Plan, the “**Plans**”). This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or related prospectus, other than as expressly stated herein with respect to the issuance of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to the General Corporation Law of the State of Delaware (the “**DGCL**”), and we express no opinion with respect to any other laws.

LATHAM & WATKINS^{LLP}

Subject to the foregoing and the other matters set forth herein, it is our opinion that as of the date hereof, when the Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the purchasers, and have been issued by the Company for legal consideration in excess of par value in the circumstances contemplated by the Plans, assuming in each case that the individual issuances, grants or awards under the Plans are duly authorized by all necessary corporate action and duly issued, granted or awarded and exercised in accordance with the requirements of law and the Plans (and the agreements duly adopted thereunder and in accordance therewith), the issue and sale of the Shares will have been duly authorized by all necessary corporate action of the Company, and such Shares will be validly issued, fully paid and non-assessable. In rendering the foregoing opinion, we have assumed that the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the DGCL.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Latham & Watkins LLP

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Fluence Energy, Inc. 2021 Incentive Award Plan, Fluence Energy, LLC Phantom Equity Incentive Plan, and 2020 Unit Option Plan of Fluence Energy, LLC to the use of our report dated June 24, 2021, with respect to the consolidated financial statements of Fluence Energy, LLC for the year ended September 30, 2020 included in Fluence Energy, Inc.'s Registration Statement on Form S-1 (No. 333-259839) filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Tysons, Virginia
October 28, 2021
