

GLOBAL POWER EQUIPMENT GROUP INC/
Form S-8
December 13, 2004

As filed with the Securities and Exchange Commission on December 13, 2004.

Registration No. 333-____

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

GLOBAL POWER EQUIPMENT GROUP INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

73-1541378
(I.R.S. employer identification no.)

6120 South Yale, Suite 1480

Tulsa, Oklahoma 74136

(Address of principal executive offices including zip code)

2004 Stock Incentive Plan

(Full title of the plan)

Candice L. Cheeseman, Esq.
General Counsel and Secretary
6120 South Yale, Suite 1480
Tulsa, Oklahoma 74136
(918) 488-0828

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

CALCULATION OF REGISTRATION FEE

| Title of securities to be registered | Amount to be registered(1) | Proposed maximum offering price per share(2) | Proposed maximum aggregate offering price(2) | Amount of registration fee |
|---|---------------------------------------|---|---|---|
| Common Stock, \$.01 par value | 1,500,000 shares | \$8.92 | \$13,380,000 | \$1,575.00 |

- (1) Pursuant to Rule 416, this Registration Statement also covers such indeterminable number of additional shares of common stock as may become issuable as a result of any future anti-dilution adjustment in accordance with the terms of the 2004 Stock Incentive Plan.
- (2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) based on a price of \$8.92 per share, which represents the average of the high and low sale prices reported on the New York Stock Exchange on December 10, 2004.
-

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents are incorporated by reference and made a part of this Registration Statement:

- (1) Our Annual Report on Form 10-K for the fiscal year ended December 27, 2003, as amended by our Form 10-K/A filed with the SEC on May 14, 2004;
- (2) Our Quarterly Reports on Form 10-Q for the quarters ended March 27, 2004, June 26, 2004, and September 25, 2004;
- (3) Our Current Reports on Form 8-K dated January 30, 2004, October 1, 2004, October 21, 2004, November 23, 2004 and November 24, 2004; and
- (4) The description of our common stock contained in the Registration Statement on Form 8-A filed with the SEC on May 18, 2001, including any amendment or report heretofore or hereafter filed for the purpose of updating the description of our common stock.

In addition, all documents we subsequently file pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), (other than Current Reports furnished under Items 2.02 or 7.01 of Form 8-K) prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities offered hereby then remaining unsold, shall be deemed to be incorporated by reference and to be a part of this Registration Statement from the date of filing of such documents. Any statement contained in this Registration Statement, or in a document 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 in any other subsequently filed incorporated document modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed to constitute a part of this Registration Statement, except as so modified or superseded.

Inability to Obtain Consent of Arthur Andersen LLP

Arthur Andersen LLP audited our consolidated financial statements for the year ended December 29, 2001. Arthur Andersen LLP is no longer licensed to practice accounting and, accordingly, is not in a position to provide a written consent to the incorporation by reference in this Registration Statement of their report on our consolidated financial statements for the year ended December 29, 2001. Accordingly, we have dispensed with the filing of their consent in reliance upon Rule 437a under the Securities Act of 1933, as amended (the Securities Act). Because Arthur Andersen LLP has not consented to such incorporation by reference of their report in this Registration Statement, you may not be able to recover against Arthur Andersen LLP under Section 11 of the Securities Act for any untrue statement of a material fact contained in the financial statements audited by Arthur Andersen LLP or any omission to state a material fact required to be stated in those financial statements.

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 145 of the General Corporation Law of the State of Delaware provides generally that a corporation may indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative in nature, by reason of the fact that he is or was a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) and, in a proceeding not by or in the right of the corporation, judgments, fines, and amounts paid in settlement, actually and reasonably incurred by him in connection with such suit or proceeding, if he acted in good faith and in a manner believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reason to believe his conduct was unlawful. Delaware law further provides that a corporation may not indemnify any person against expenses incurred in connection with an action by or in the right of the corporation if such person shall have been adjudged to be liable in the performance of his duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine that, despite the adjudication of liability but in the view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses which such court shall deem proper.

Article IV of our Amended and Restated By-Laws provides that we shall, to the full extent permitted by law, indemnify each person who is or was a director, officer, employee or agent of our company and may indemnify each person who is or was serving at our request as a director, officer, employee or agent of or participant in another corporation or of a partnership, joint venture, trust or other enterprise. Article IX of our Amended and Restated Certificate of Incorporation also provides that we will indemnify officers, directors, employees and agents of our company to the fullest extent permitted under Delaware General Corporation Law and advance expenses incurred by such directors, officers, employees and agents in relation to any action, suit or proceeding.

Section 102(b)(7) of Delaware General Corporation Law gives each Delaware corporation the power to eliminate or limit its directors' personal liability to the corporation or its stockholders for monetary damages for certain breaches of fiduciary duty as a director, except:

for any breach of the director's duty of loyalty to the corporation or its stockholders;

for acts or omissions not in good faith, or which involve intentional misconduct or a knowing violation of the law;

under Section 174 of Delaware's General Corporation Law (providing for liability of directors for the unlawful payment of dividends or unlawful stock purchases or redemptions); or

for any transaction from which a director derived an improper personal benefit.

Our Amended and Restated Certificate of Incorporation eliminates the personal liability of our directors to the fullest extent permitted by Section 102(b)(7) of Delaware General Corporation Law.

We maintain directors' and officers' liability insurance to insure our directors and officers against certain liabilities which might be imposed as a result of, and certain expenses in connection with the defense of, actions, suits or proceedings to which they are parties by reason of being or having been such directors or officers.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

| <u>Exhibit Number</u> | <u>Description</u> |
|-----------------------|---|
| 4.1 | Amended and Restated Certificate of Incorporation of Global Power Equipment Group Inc. (incorporated by reference to Exhibit 3.1(b) to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001). |
| 4.2 | Amended and Restated By-Laws of Global Power Equipment Group Inc., as amended October 23, 2003 (incorporated by reference to Exhibit 3.2 to the Company's Annual Report on Form 10-K for the year ended December 27, 2003). |
| 5.1 | Opinion of Conner & Winters, P.C. |
| 23.1 | Consent of Pricewaterhouse Coopers, LLP. |
| 23.2 | Consent of Arthur Andersen LLP (omitted pursuant to Rule 437a). |
| 23.3 | Consent of Conner & Winters, P.C. (included in Exhibit 5.1). |
| 24 | Power of Attorney (included on the signature page to this Registration Statement). |
| 99.1 | Global Power Equipment Group Inc. 2004 Stock Incentive Plan (incorporated by reference to Appendix B to the Company's 2004 Proxy Statement dated April 16, 2004). |

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made of the securities registered hereby, 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 this 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 this Registration Statement;

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

provided, however, that the undertakings set forth in paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this 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.

(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 registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant'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 this 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.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that, in the opinion of the Securities and Exchange 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 registrant of expenses incurred or paid by a director, officer or controlling person of the registrant 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 registrant will, unless in the opinion of its counsel the matter has been settled by

Edgar Filing: GLOBAL POWER EQUIPMENT GROUP INC/ - Form S-8

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.

II-4

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Tulsa, State of Oklahoma, on the 13th day of December, 2004.

GLOBAL POWER EQUIPMENT GROUP INC.

By: /s/ Larry D. Edwards
Larry D. Edwards

Chief Executive Officer, President and

Chairman of the Board

KNOW ALL MEN BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints Larry D. Edwards and James P. Wilson, and each of them, his true and lawful attorneys-in-fact and agents with full power of substitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or his or their substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated:

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|---|-------------------|
| <u>/s/ Larry D. Edwards</u> Larry D. Edwards | Director, Chief Executive Officer, President and Chairman of the Board | December 13, 2004 |
| <u>/s/ James P. Wilson</u> James P. Wilson | Chief Financial Officer and Vice President of Finance (Principal Financial and Accounting Officer) | December 13, 2004 |
| <u>/s/ Adrian Doherty, Jr.</u> Adrian Doherty, Jr. | Director | December 13, 2004 |

Edgar Filing: GLOBAL POWER EQUIPMENT GROUP INC/ - Form S-8

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|---|-------------------|
| <u>/s/ Stephen Eisenstein</u> Stephen Eisenstein | Director and Vice Chairman of the Board | December 13, 2004 |
| <u>/s/ Edgar Hotard</u> Edgar Hotard | Director | December 13, 2004 |
| <u>/s/ Ira Kleinman</u> Ira Kleinman | Director | December 13, 2004 |
| <u>/s/ Jerry Ryan</u> Jerry Ryan | Director | December 13, 2004 |
| <u>/s/ Bengt Sohlén</u> Bengt Sohlén | Director | December 13, 2004 |

EXHIBIT INDEX

| <u>Exhibit Number</u> | <u>Description</u> |
|-----------------------|---|
| 4.1 | Amended and Restated Certificate of Incorporation of Global Power Equipment Group Inc. (incorporated by reference to Exhibit 3.1(b) to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001). |
| 4.2 | Amended and Restated By-Laws of Global Power Equipment Group Inc., as amended October 23, 2003 (incorporated by reference to Exhibit 3.2 to the Company's Annual Report on Form 10-K for the year ended December 27, 2003). |
| 5.1 | Opinion of Conner & Winters, P.C. |
| 23.1 | Consent of PricewaterhouseCoopers, LLP. |
| 23.2 | Consent of Arthur Andersen LLP (omitted pursuant to Rule 437a). |
| 23.3 | Consent of Conner & Winters, P.C. (included in Exhibit 5.1). |
| 99.1 | Global Power Equipment Group Inc. 2004 Stock Incentive Plan (incorporated by reference to Appendix B to the Company's 2004 Proxy Statement dated April 16, 2004). |