

PLAINS ALL AMERICAN PIPELINE LP
Form 425
October 24, 2013

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): **October 21, 2013**

Plains All American Pipeline, L.P.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

1-14569
(Commission
File Number)

76-0582150
(IRS Employer
Identification No.)

333 Clay Street, Suite 1600
Houston, Texas
(Address of principal
executive offices)

77002
(Zip Code)

Registrant's telephone number, including area code: **(713) 646-4100**

(Former name or former address, if changed since last report): **Not applicable**

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into a Material Definitive Agreement.

Merger Agreement

Plains All American Pipeline, L.P., a Delaware limited partnership (PAA), has entered into an Agreement and Plan of Merger dated as of October 21, 2013 (the Merger Agreement), by and among PAA, PAA Acquisition Company LLC, a Delaware limited liability company and wholly-owned subsidiary of PAA (MergerCo), PAA Natural Gas Storage, L.P., a Delaware limited partnership (PNG), and PNGS GP LLC, a Delaware limited liability company and the general partner of PNG (PNG GP).

The conflicts committee of the board of directors of PNG GP (the PNG Conflicts Committee) approved the Merger Agreement and the Merger Transactions (defined below) and determined that the Merger Agreement and the Merger Transactions are fair and reasonable to PNG and the holders of PNG common units (as defined below) unaffiliated with PAA. The PNG Conflicts Committee has caused PNG GP to approve the Merger Agreement and the Merger Transactions and directed that the Merger Agreement and the Merger Transactions be submitted to the unitholders of PNG at a special meeting of the unitholders for approval. The PNG Conflicts Committee recommended that the unitholders of PNG vote in favor of the proposal to approve the Merger Agreement and the Merger Transactions at the special meeting of the unitholders.

PAA owns 100% of the membership interests in PNG GP, approximately 46% of PNG's 61.2 million outstanding common units (PNG common units) and all of the series A subordinated units and series B subordinated units (PNG subordinated units) representing limited partner interests in PNG. Pursuant to the Merger Agreement, MergerCo will merge with and into PNG at the effective time of the merger, with PNG surviving (the Merger), such that following the Merger, PNG GP will remain a wholly-owned subsidiary of PAA and the sole general partner of PNG, and PAA will be the sole limited partner of PNG. Except for the PNG common units owned by PAA, all PNG common units outstanding as of the effective time of the Merger will be cancelled and converted into the right to receive 0.445 common units representing limited partnership interests of PAA (PAA common units) per PNG common unit. The transaction is expected to result in approximately 14.7 million additional common units being issued by PAA. In connection with the closing of the Merger, the owners of PAA's general partner have agreed to reduce their incentive distribution rights under PAA's agreement of limited partnership by \$12 million in each of 2014 and 2015, \$10 million in 2016 and \$5 million per year thereafter. All of the PNG common units and PNG subordinated units owned by PAA will be unchanged and remain issued and outstanding, representing limited partnership interests of the surviving entity, and no consideration will be delivered in respect thereof. Incentive distribution rights of PNG, which are owned by PNG GP, will also be unchanged and remain outstanding as incentive distribution rights of the surviving entity, and no consideration will be delivered in respect thereof. No fractional PAA common units will be issued in the Merger. Holders of PNG common units, other than PAA, will receive cash in lieu of receiving any fractional PAA common unit to which any holder of PNG common units would otherwise have been entitled in an amount equal to such fractional interest multiplied by the average of the closing price of PAA common units for the ten consecutive NYSE full trading days ending at the closing of the last NYSE full trading day immediately preceding the day the merger closes. The parties anticipate that the Merger will close in the latter half of the fourth quarter of 2013, pending the satisfaction of certain customary conditions thereto, and that the previously announced quarterly distribution of \$0.3575 per PNG common unit payable to holders of record of such units on November 1, 2013 will be paid on November 14, 2013 as scheduled.

The Merger Agreement contains customary representations, warranties, covenants and agreements by each of the parties. Completion of the Merger is conditioned upon, among other things: (1) approval of the Merger Agreement and the transactions contemplated by the Merger Agreement, including the Merger (the Merger Transactions), by the affirmative vote of holders, as of the record date of the special meeting of PNG's unitholders (including PAA), of a majority of the outstanding PNG common units, voting as a class, and a majority of the outstanding PNG subordinated units, voting as a class; (2) all required filings, consents, approvals, permits and authorizations in connection with the Merger having been made or obtained; (3) the absence of legal injunctions or impediments prohibiting the Merger Transactions; (4) the effectiveness of a registration statement on Form S-4 with respect to the issuance of PAA common units in the Merger; and (5) approval of the listing on the New York Stock Exchange, subject to official notice of issuance, of the PAA common units to be issued in the Merger.

Pursuant to the Merger Agreement, PAA has agreed to vote the PNG common units and the PNG subordinated units owned beneficially or of record by it or any of its subsidiaries in favor of the Merger Agreement and the Merger Transactions, including the 28,155,526 PNG common units currently held by PAA and the 25,434,351 PNG subordinated units currently held by PAA, which units represent approximately 46% of the outstanding PNG common units and 100% of the outstanding PNG subordinated units.

The Merger Agreement contains provisions granting both PNG and PAA the right to terminate the Merger Agreement for certain reasons, including, among others, if: (1) the Merger is not completed on or before April 30, 2014; (2) any governmental authority has issued a final and nonappealable statute, rule, order, decree or regulation enjoining or prohibiting consummation of the Merger; (3) under certain conditions, there has been a material breach of any of the representations, warranties, covenants or agreements set forth in the Merger Agreement by a party to the Merger Agreement which is not cured within 30 days following receipt by the breaching party of written notice from the non-breaching party; (4) PNG does not obtain the requisite unitholder approval of the Merger Agreement and the Merger Transactions; or (5) either the PNG GP board of directors or the PNG Conflicts Committee, in accordance with the Merger Agreement, changes its recommendation to the unitholders of PNG with respect to approving the Merger Agreement and the Merger Transactions or publicly proposes to approve, adopt or recommend another proposal or offer from a third party relating to the acquisition of PNG (a PNG Change in Recommendation).

All costs and expenses incurred in connection with the Merger Agreement and the Merger Transactions will be paid by the party incurring such costs and expenses, except that if the Merger Agreement is terminated due to a PNG Change in Recommendation PNG will pay the expenses incurred by PAA, and if the Merger Agreement is terminated due to a material breach, the breaching party will pay the expenses incurred by the non-breaching party, in each case not to exceed \$5 million.

Cautionary Statements

The foregoing description of the Merger Agreement is qualified in its entirety by reference to the full text of the Merger Agreement, which is attached hereto as Exhibit 2.1 and incorporated herein by reference.

The Merger Agreement is filed herewith to provide investors with information regarding its terms and is not intended to provide any other factual information about PNG or PAA. In particular, the assertions embodied in the representations and warranties contained in the Merger Agreement are as of specified dates and were made only for purposes of such Merger Agreement. Such representations and warranties are solely for the benefit of the parties to the Merger Agreement, and may be subject to limitations agreed between the parties. Moreover, certain representations and warranties in the Merger Agreement were used for the purpose of allocating risk among the parties thereto, rather than establishing matters as facts. Accordingly, they should not be relied upon as statements of factual information. Investors should not rely on the representations and warranties in the Merger Agreement as characterizations of the actual state of facts about PNG or PAA. None of the representations and warranties contained in the Merger Agreement will have any legal effect among the parties to the Merger Agreement after the closing of the Merger.

Forward-Looking Statements

Except for historical information contained herein, the statements in this Current Report on Form 8-K are forward-looking statements. Forward-looking statements and the business prospects of PAA are subject to a number of risks and uncertainties that may cause PAA's actual results in future periods to differ materially from the forward-looking statements. These risks and uncertainties include, among other things, risks associated with the Merger Agreement and the Merger Transactions, including the risks that the Merger will not be consummated or the anticipated benefits from the Merger cannot be fully realized; failure to implement or capitalize, or delays in implementing or capitalizing, on planned internal growth projects; unanticipated changes in crude oil market structure, grade differentials and volatility (or lack thereof); the availability of, and PAA's ability to consummate, acquisition or combination opportunities; the successful integration and future performance of acquired assets or businesses and the risks associated with operating in lines of business that are distinct and separate from PAA's historical operations; the occurrence of a natural disaster, catastrophe, terrorist attack or other event, including attacks on PAA's electronic and computer systems; tightened capital markets or other factors that increase PAA's cost of capital or limit PAA's access to capital; maintenance of PAA's credit rating and ability to receive open credit from PAA's suppliers and trade counterparties; continued creditworthiness of, and performance by, PAA's counterparties, including financial institutions and trading companies with which PAA does business; the effectiveness of PAA's risk management activities; environmental liabilities or events that are not covered by an indemnity, insurance or existing reserves; declines in the volume of crude oil, refined product and NGL shipped, processed, purchased, stored, fractionated and/or gathered at or through the use of PAA's facilities, whether due to declines in production from existing oil and gas reserves, failure to or slowdown in the development of additional oil and gas reserves or other factors; shortages or cost increases of supplies, materials or labor; fluctuations in refinery capacity in areas supplied by PAA's mainlines and other factors affecting demand for various grades of crude oil, refined products and natural gas and resulting changes in pricing conditions or transportation throughput requirements; PAA's ability to obtain debt or equity financing on satisfactory terms to fund additional acquisitions, expansion projects, working capital requirements and the repayment or refinancing of indebtedness; the impact of current and future laws, rulings, governmental regulations, accounting standards and statements, and related interpretations; non-utilization of PAA's assets and facilities; the effects of competition; interruptions in service on third-party pipelines; increased costs or lack of availability of insurance; fluctuations in the debt and equity markets, including the price of PAA's units at the time of vesting under PAA's long-term incentive plans; the currency exchange rate of the Canadian dollar; weather interference with business operations or project construction; risks related to the development and operation of PAA's facilities; factors affecting demand for natural gas and natural gas storage services and rates; general

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economic, market or business conditions and the amplification of other risks caused by volatile financial markets, capital constraints and pervasive liquidity concerns; other factors and uncertainties inherent in the transportation, storage, terminalling and marketing of crude oil and refined products, as well as in the storage of natural gas and the processing, transportation, fractionation, storage and marketing of natural gas liquids; the diversion of management in connection with the merger and PAA's ability to realize fully or at all the anticipated benefits of the merger; and other factors and uncertainties inherent in the ownership, development and operation of natural gas storage facilities. These and other risks are described in PAA's 10-K and 10-Q Reports and other filings with the Securities and Exchange Commission (SEC). In addition, PAA may be subject to currently unforeseen risks that may have a materially adverse effect on it. Accordingly, no assurances can be given that the actual events and results will not be materially different than the anticipated results described in the forward-looking statements. PAA undertakes no duty to publicly update these statements except as required by law.

Important Notice to Investors

This communication does not constitute an offer to sell any securities. Any such offer will be made only by means of a prospectus, pursuant to a registration statement filed with the SEC.

In connection with the proposed Merger, a registration statement of PAA, which will include a proxy statement and will constitute a prospectus of PAA, and other materials will be filed with the SEC. Investors and security holders are urged to carefully read the documents filed with the SEC regarding the proposed Merger when they become available, because they will contain important information about PAA, PNG and the proposed Merger. When available, investors and security holders may obtain a free copy of the proxy statement/prospectus and other documents containing information about PAA and PNG, without charge, at the SEC's website at www.sec.gov.

PAA, PNG and certain of their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from the unitholders of PNG in connection with the proposed Merger. Information about the directors and executive officers of the general partner of PAA is set forth in PAA's Annual Report on Form 10-K for the year ended December 31, 2012, which was filed with the SEC on February 27, 2013. Information about the directors and executive officers of PNG GP is set forth in PNG's Annual Report on Form 10-K for the year ended December 31, 2012, which was filed with the SEC on February 27, 2013. These documents can be obtained without charge at the SEC's website indicated above. Additional information regarding the interests of these participants may be obtained by reading the proxy statement/prospectus regarding the proposed Merger when it becomes available.

Item 7.01 Regulation FD Disclosure.

On October 22, 2013, PAA issued a press release relating to the Merger. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K. The press release contains statements intended as forward-looking statements that are subject to the cautionary statements about forward-looking statements set forth in the press release.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

| Exhibit Number | Description |
|-----------------------|--|
| 2.1 | Agreement and Plan of Merger dated as of October 21, 2013, by and among Plains All American Pipeline, L.P., PAA Acquisition Company LLC, PAA Natural Gas Storage, L.P., and PNGS GP LLC. |
| 99.1 | Press release of PAA dated October 22, 2013. |

SIGNATURES

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

PLAINS ALL AMERICAN PIPELINE, L.P.

By: PAA GP LLC, its general partner

By: PLAINS AAP, L.P., its sole member

By: PLAINS ALL AMERICAN GP LLC,
its general partner

By: /s/ Richard McGee
Name: Richard McGee
Title: Executive Vice President, General Counsel
and Secretary

Date: October 23, 2013

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