

Macquarie Infrastructure CO LLC
Form S-8
May 31, 2012
Registration No. 333-_____

As filed with the Securities and Exchange Commission on May 30, 2012.

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

FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

MACQUARIE INFRASTRUCTURE COMPANY LLC
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

43-2052503
(I.R.S. Employer
Identification Number)

125 West 55th Street
New York, New York 10019
(Address of Principal Executive Offices)(Zip Code)

Macquarie Infrastructure Company LLC
Independent Directors Equity Plan
(Full title of the plan)

Michael Kernan, Esq.
General Counsel and Secretary
Macquarie Infrastructure Company LLC
125 West 55th Street
New York, New York 10019
(Name and address of agent for service)
(212) 231-1000
(Telephone number, including area code, of agent for service)

Copies to:
Michelle Rutta, Esq.
White & Case LLP
1155 Avenue of the Americas

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New York, NY 10036
(212) 819-8200

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer”, “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐

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
LLC interests of Macquarie Infrastructure Company LLC (“LLC Interests”)	500,000	\$32.815	\$16,407,500	\$1,880.30

- (1) 500,000 LLC interests are being registered under the Macquarie Infrastructure Company LLC Independent Directors Equity Plan (the “Plan”). In addition, this Registration Statement, pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), shall cover any additional LLC Interests that become issuable under the Plan by reason of any mergers, amalgamations, stock dividends, bonus issues, stock splits, subdivisions, recapitalizations or any other similar transactions effected without the receipt of consideration which results in an increase in the number of LLC Interests of Macquarie Infrastructure Company LLC (the “Registrant”).
- (2) Pursuant to Rule 457(h) under the Securities Act of 1933, as amended, these prices are estimated solely for the purpose of calculating the registration fee and are based upon the average of the high and low sales prices of the Registrant’s shares reported on the New York Stock Exchange on May 24, 2012.
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Part I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The Registrant has sent or given or will send or give documents containing the information specified by Part I of this Registration Statement on Form S-8 (the “Registration Statement”) to participants in the Plan, as specified in Rule 428(b)(1) promulgated by the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended. The Registrant is not filing such documents with the Commission, but these documents constitute (along with the documents incorporated by reference into this Registration Statement pursuant to Item 3 of Part II hereof) a prospectus that meets the requirements of Section 10(a) of the Securities Act.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents which we have filed with the Commission are incorporated herein by reference and made part of this Registration Statement:

- (a) our Annual Report on Form 10-K for the fiscal year ended December 31, 2011, filed on February 22, 2012, and our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2012, filed on May 2, 2012 (Commission File No. 001-32384), under the Securities Exchange Act of 1934, as amended (the "Exchange Act"); and
- (b) the description of our LLC Interests contained in our Amendment No. 1 to our Registration Statement on Form 8-A (Commission File No. 001-32384), filed with the Commission on June 25, 2007.

In addition, all documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, after the date of this Registration Statement but before we file a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregister all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and are a part thereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed incorporated by reference in this Registration Statement 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 other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

None.

Item 6. Indemnification of Directors and Officers.

Certain provisions of the Registrant's Third Amended and Restated Operating Agreement of Macquarie Infrastructure Company LLC, dated as of June 22, 2007 (the "LLC Agreement") are intended to be consistent with Section 145 of the Delaware General Corporation Law, which provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against amounts paid and expenses incurred in connection with an action or proceedings to which such person is, or is threatened to be made, a party by reason of such position, if such person shall have 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 proceedings, if such person had no reasonable cause to believe his conduct was unlawful; provided that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent

that the adjudicating court determines that such indemnification is proper under the circumstances.

The LLC Agreement includes a provision that eliminates the personal liability of its directors for monetary damages for breach of fiduciary duty as a director, except for liability:

- for any breach of the director's duty of loyalty to the Registrant or its members;
- for acts or omissions not in good faith or a knowing violation of law; or
- for any transaction from which the director derived an improper benefit.

The LLC Agreement provides that:

- the Registrant shall indemnify its directors and officers to the equivalent extent permitted by Delaware General Corporation Law;
- the Registrant shall indemnify its any person serving at the request as a director, officer, partner, member, employee or agent of another corporation or other enterprise to the same extent that officers and directors are indemnified; and
- the Registrant shall pay the expenses (including attorneys' fees) incurred in defending any legal proceeding in advance of its final disposition upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined by final judicial decision that such person is not entitled to be indemnified by the Registrant.

The indemnification provisions contained in the LLC Agreement are not exclusive of any other rights to which a person may be entitled by law, agreement, vote of members or disinterested directors or otherwise.

In addition, the Registrant will maintain insurance on behalf of our directors and executive officers and certain other persons insuring them against any liability asserted against them in their respective capacities or arising out of such status.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

See attached "Index to Exhibits" list.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

1. To file, during any period in which offers or sales are being made of 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 aggregate, represent a fundamental change in the information set forth in this 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 a 20 percent 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 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 with or furnished to the Commission by us 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 further undertake that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report filed on Form 10-K pursuant to Section 13(a) or 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 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 us of expenses incurred or paid by a director, officer or controlling person of us 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, we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by us 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 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 New York, State of New York, on this 30th day of May, 2012.

MACQUARIE INFRASTRUCTURE COMPANY LLC

By: /s/ James Hooke
James Hooke
Chief Executive Officer
(Principal Executive Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS that each person whose signature appears below constitutes and appoints James Hooke as such person's true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution for such person and in such person's name, place and stead, in any and all capacities, to sign and file (1) a registration statement or statements on Form S-8, or such other form as may be recommended by counsel, to be filed with the Securities and Exchange Commission (the "Commission"), and any and all amendments and post-effective amendments thereto, and any and all post-effective amendments to registration statements or statements on Form S-8 previously filed with the Commission, and any and all instruments and documents filed as a part of or in connection with the said registration statement or amendments thereto, with respect to the Macquarie Infrastructure Company LLC Independent Directors Equity Plan, and (2) any registration statements, reports and applications relating thereto to be filed by Macquarie Infrastructure Company LLC with the Commission and/or any national securities exchanges under the Securities Exchange Act of 1934, as amended, and any and all amendments thereto, and any and all instruments and documents filed as part of or in connection with such registration statements or reports or amendments thereto; granting unto said attorney-in-fact and agent 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 for all intents and purposes as he or she might or could do in person, and hereby ratifying and confirming all that the said attorney-in-fact and agent or any of them, may lawfully do or cause to be done by virtue hereof.

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

Name and Signature	Title	Date
/s/ James Hooke James Hooke	Chief Executive Officer (Principal Executive Officer)	May 30, 2012
/s/ Todd Weintraub Todd Weintraub	Chief Financial Officer (Principal Financial Officer)	May 30, 2012
/s/ John Roberts John Roberts	Chairman/Director	May 30, 2012
/s/ Norman H. Brown, Jr. Norman H. Brown, Jr.	Director	May 30, 2012

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Name and Signature	Title	Date
/s/ George W. Carmany, III George W. Carmany, III	Director	May 30, 2012
/s/ Henry E. Lentz Henry E. Lentz	Director	May 30, 2012
/s/ William H. Webb William H. Webb	Director	May 30, 2012

EXHIBIT INDEX

Exhibit No. Description of Document

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| 4.1 | Third Amended and Restated Operating Agreement of Macquarie Infrastructure Company LLC, incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K, filed with the Commission on June 22, 2007 |
| 4.2 | Registration Rights Agreement among Macquarie Infrastructure Company Trust, Macquarie Infrastructure Company LLC and Macquarie Infrastructure Management (USA) Inc., dated December 21, 2004, incorporated by reference to Exhibit 99.4 of the Registrant's Current Report on Form 8-K, filed with the Commission on December 27, 2004 |
| 4.3 | Specimen certificate evidencing LLC interest of Macquarie Infrastructure Company LLC, incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K, filed with the Commission on June 22, 2007 |
| 4.5 | Macquarie Infrastructure Company LLC Independent Directors Equity Plan, incorporated by reference to Exhibit 10.1 of the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2008, filed with the Commission on November 6, 2008. |
| *5.1 | Opinion of White & Case LLP |
| *23.1 | Consent of KPMG LLP |
| *23.2 | Consent of White & Case LLP (included in Exhibit 5.1) |
| *24 | Power of Attorney (included on signature pages) |

* Filed herewith