

Testimony of Dan Weaver
President & Executive Director
Pennsylvania Independent Oil & Gas Association (PIOGA)
before the
House Consumer Affairs Committee
Hearing on HB 284 – PA One Call Law reauthorization bill
June 5, 2017

Majority Chairman Godshall, Minority Chairman Caltagirone and Committee members, I am Dan Weaver, President & Executive Director of the Pennsylvania Independent Oil & Gas Association, known as PIOGA. I have replaced, as much as anyone can, Lou D'Amico, who was our organization's President & Executive Director since 1995.

PIOGA's roots go back to 1918 when the Pennsylvania Oil, Gas and Minerals Association (POGAM) was created. In 1978 a group of independent Pennsylvania natural gas producers left POGAM to form the Pennsylvania Natural Gas Associates (PNGA) and in 1981 that organization's name changed to the Independent Oil and Gas Association of Pennsylvania (IOGA of PA). After this POGAM generally represented oil production in northwest PA and IOGA of PA included more natural gas developers in southwestern PA. Over the years IOGA's membership expanded to include Pennsylvania oil producers as well as other service companies and individuals interested in the safe and reasonable development of oil and gas resources in Pennsylvania. I am pleased to say that on April 1, 2010, IOGA of PA reunited with POGAM and the name of our reconstituted organization changed to the Pennsylvania Independent Oil & Gas Association.

With the development of shale oil and natural gas resources in Pennsylvania, PIOGA's membership swelled to nearly 1,000 before decreasing to its present approximately 500 members as a result of the downturn in commodity prices and decreased activity. Our members include:

oil and natural gas producers; drilling contractors; service companies; manufacturers; marketers; PUC-licensed natural gas suppliers; professional engineering, accounting and law firms and consultants; and royalty owners. For decades, our members have successfully provided heat to homes, gas to stovetops, and energy to the citizens of the Commonwealth to grow and prosper their communities, while protecting the air and water resources of the Commonwealth of Pennsylvania – the State we call home.

PIOGA supported the transfer of PA One Call Law enforcement authority from the Department of Labor and Industry (L&I) to the PUC back in 2013 when HB 1607 was before this Committee. However, the disingenuous lobbying efforts by the PUC and POCS on the various reauthorization bills that have been introduced have raised questions concerning the PUC's knowledge of the federal pipeline safety laws and regulations it presently has the authority to enforce through Act 127 of 2011, and also its ability to fairly enforce the PA One Call Law as written. So PIOGA no longer supports the transfer, but is simply providing the Committee with the information that PIOGA believes raises pertinent questions the Committee and General Assembly should consider concerning the transfer.

As Milissa Bauer states in her testimony, PIOGA and its producer members are just as concerned with the public safety risks of our operations as anyone. PIOGA's position on HB 284 is that the proposed elimination of the coordination in the existing PA One Call Law with the federal pipeline safety laws and regulations with respect to conventional production and gathering lines is not necessary to ensure additional public safety or to comply with federal requirements concerning federal pipeline safety and damage prevention grants – contrary to what the PUC and POCs have been telling the General Assembly.

PIOGA's General Counsel Kevin Moody regrets that he cannot be here because of a previously scheduled PUC hearing, but he has provided a memorandum (included with my testimony) explaining the legal basis for PIOGA's position. I will provide additional information that I hope will further inform this Committee's decision making.

For decades, our members producing oil and natural gas have not been required to include in POCS their production and gathering liners that are not regulated under the federal pipeline safety laws and regulations as “regulated onshore” (natural gas) or “regulated rural”

(oil) gathering lines. As explained in Ms. Bauer's testimony and PIOGA's legal memorandum, this has been the result of the risk-based approach required under the federal pipeline safety laws and regulations. However, our members have voluntarily enrolled some lines in POCS because of their concerns with public safety in those areas. The proposed change in this bill to require participation of all conventional production and gathering facilities in the Pa One Call system is the primary reason PIOGA is providing testimony. PIOGA appreciates the opportunity to provide this written testimony and participate in live testimony to answer questions the Committee has.

First, I must state that PIOGA agrees with HB 284's (1) eliminating the exemptions for municipalities and State agencies and their excavators/contractors and (2) increasing enforcement authority and penalties because these are the only changes necessary to avoid the loss of federal pipeline safety and damage prevention grants, again, contrary to what the PUC and POCS have been telling the General Assembly. This is clear from the federal pipeline safety law quoted in PIOGA's legal memorandum¹ and PHMSA's regulations concerning grants to aid State pipeline safety programs, including one call programs, in 49 CFR Part 198.

PIOGA understands that this Committee and the General Assembly may have the impression that eliminating the exclusion in the current PA One Call Law is necessary to avoid the loss of federal grant funds for pipeline safety or damage prevention programs, but *this is not true*, as explained in PIOGA's legal memorandum.

Not only have the PUC and POCs misrepresented federal law and regulations on this issue, they have also said nothing about the two other provisions in federal law addressed in PIOGA's legal memorandum – 49 USC § 6103(c)(2) and (3). Briefly, § 6103(c)(2) requires a State one-call notification program to provide for and document “a reasonable relationship between the benefits of one-call notification and the cost of implementing and complying with the requirements of the State one-call notification program.” And § 6103(c)(3) provides for voluntary participation in a State one-call notification program when the State determines that a type of underground facility or an activity of a type of excavator poses a *de minimis* risk to public safety or the environment.

¹ 49 USC § 6103(a)(2).

We believe both of these provisions support PIOGA's position to maintain the existing coordination in the existing PA One Call Law with the federal pipeline safety laws and regulations with respect to conventional production and gathering lines. Consistent with Ms. Bauer's testimony, PIOGA respectfully suggests that the "reasonableness" requirement of § 6103(c)(2) could be addressed in a public hearing to review the report and recommendations from the Legislative Budget and Finance Committee. The failure of either L&I or the PUC to make a *de minimis* determination concerning conventional production and gathering lines per § 6103(c)(3) should not preclude application of this provision to any PA One Call Law reauthorization bill because that determination has already been made by PHMSA as the result of the risk-based approach required by the federal pipeline laws. And this determination is reflected in the exemption of Class 1 gathering lines from federal regulation as "regulated onshore" (natural gas) or "regulated rural" (oil) gathering lines.

Two other developments that occurred after this Committee's July 18, 2013 hearing on HB 1607 that PIOGA believes are pertinent to the question of the transfer of enforcement authority. In January 2014 the PUC sent PIOGA a list of "incidents" involving lines not under the PUC's jurisdiction that the PUC said supported its position that the existing exclusion in the PA One Call Law for conventional production and gathering lines be removed. PIOGA provided a response pointing out that *none* of these incidents involved non-jurisdictional conventional production or gathering lines. PIOGA will provide the Committee with copies of the PUC's letter and PIOGA's response, if any members would like us to do so.

The most egregious development was an email sent by the PUC to the General Assembly last year in opposition to an amendment to SB 1235 sponsored by Senator Hutchinson. A copy of this email is included with my testimony. It is readily apparent to even a non-lawyer like me that the statements in this email are obviously not true. The most obvious are:

- Production and gathering lines (largely synonymous terms, but production is assumed to be closer to the well than gathering)

Production and gathering are not synonymous terms, and are clearly different operations under the federal pipeline safety laws and regulations.

- When the production/gathering lines are in Class 2, 3 or 4 areas, they are presently regulated by PHMSA (and Act 127) and included in One Call.

Production lines have never been regulated under the federal pipeline safety laws and regulations because they are not involved in the “transportation” of natural gas, which is a defined term in the law and regulations. Class locations are applicable only to gathering lines.

- **The proposed amendment would actually take some of these regulated lines out of One Call despite the fact they are currently "regulated gathering lines".** (Emphasis in original)

As stated above, no production lines are “currently ‘regulated onshore gathering lines’.”

Finally, I want to address a different aspect of the new provision proposed in HB 284 requiring facility owners to “participate in the One Call System’s Member Mapping Solutions as determined by the One Call System’s board of directors.” Related to this provision is another new one that would place the burden of proof on facility owners to prove that a line or facility installed prior to the effective date of the HB 284 “was not subject to the requirements of this act at the time the line or facility was installed.”

This provision is based on the same problem as the position that conventional producers – and not the PUC or POCS – bear the burden of showing why the existing exclusion in the PA One Call Law for conventional production and gathering lines and facilities should *not* be removed. Conventional producers should not have this burden, especially when their production and Class 1 gathering lines installed prior to the effective date of a PA One Call Law reauthorization bill were so clearly not subject to the requirements of the federal pipeline safety laws or the prior PA One Call Law.

PIOGA recommendations

- PIOGA’s recommendation is that the proposed deletion of the sentence in the PA One Call law definition of “line or facility” exempting production and gathering facilities from mandatory participation in the PA One Call system – which is consistent with existing federal pipeline safety law – be rejected, for the reasons set forth above and in PIOGA’s legal memorandum.

- In the alternative, PIOGA recommends that mandatory participation in the PA One Call system for production and gathering facilities be limited to facilities producing and gathering oil

and natural gas from “unconventional formations” as defined in Act 127 of 2011 and Act 13 of 2012:

- The provision that places the burden on facility owners to prove that a line or facility installed prior to the effective date of the HB 284 was not subject to the requirements of the reauthorization bill at the time the line or facility was installed should be removed.

As stated previously, PIOGA appreciates this opportunity to provide its position and recommendations on these issues of vital importance to PIOGA and its potentially affected members, and we are available to respond to any questions Committee members have concerning this testimony or the subject matter of HB 1607. However, we reserve the option to address other issues that have not been addressed in this testimony.