

**Testimony of Milissa Bauer**  
**Executive Vice President, Kriebel Companies, Clarion, PA**  
**on behalf of the**  
**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 Milissa Bauer, Executive Vice President of the Kriebel Companies based in Clarion, PA. The Kriebel Companies are the companies independently owned by the Kriebel family that acquire natural gas reserves in western Pennsylvania for drilling and operating traditional shallow, or conventional, gas wells. These companies are: Kriebel Minerals, Inc.; Kriebel Well Services, Inc.; Kriebel Resources Co., LLC; and Kriebel Wells. Additional information about the Kriebel Companies is available on our website: <http://www.kriebelcompanies.com/>. Kriebel Minerals is an independent natural gas producer with conventional production delivered to the pipeline systems of Peoples Natural Gas Company LLC, Peoples Natural Gas Company LLC – Equitable Division, Peoples TWP, Dominion Transmission, Columbia Transmission, Columbia of PA, and National Fuel.

The Kriebel Companies are members of the Pennsylvania Independent Oil & Gas Association (PIOGA), an Internal Revenue Code (IRC) § 501(c)(6) tax exempt nonprofit trade association, and my testimony here today is on behalf of the Kriebel Companies as well as PIOGA and its other similarly situated conventional oil and natural gas producers. Dan Weaver, PIOGA's President & Executive Director, is here today and will provide more information about PIOGA.

First, I must emphasize that the Kriebel family and Companies, and PIOGA and its producer members, are just as concerned with the public safety risks of our operations as anyone. That's why, although not legally required to do so, Kriebel Minerals voluntarily enrolled some of its production lines and facilities in the PA One Call System (POCS) in February 2008 because of public safety concerns in those areas. Other PIOGA producer members have also voluntarily enrolled certain production and gathering lines and facilities, while others have gathering lines that are required to be enrolled.

I'm here today to help to explain why the proposed elimination in HB 284 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. Certainly, some proposed changes in HB 284 – such as the Damage Prevention Committee and increased enforcement procedures and penalties – and some changes that we propose, are necessary to ensure additional public safety, but mandatory participation in POCS for conventional production and gathering lines is not one.

Attached to Dan Weaver's testimony is a memorandum prepared by PIOGA's General Counsel explaining the legal basis for PIOGA's position. The PUC and POCS have relied upon what they have told you and other members of the General Assembly the federal pipeline safety laws and regulations require, but as PIOGA's legal memorandum shows, what they have told you is not all true. For example, production lines and facilities have never been subject to the federal pipeline safety laws.

Conventional oil and natural gas production and gathering lines are small diameter (2-8 inches), low volume and low pressure, and pose *de minimis* risks to the public. This is why the federal Pipeline & Hazardous Materials Safety Administration (PHMSA) has exempted these gathering lines located in the most rural areas (Class 1 locations) from regulation based upon the risk-based approach required by the federal pipeline safety laws. This risk-based approach includes these two basic principles: (1) address known, quantifiable risks that are demonstrated through data; and (2) are justified by an accurate cost-benefit analysis that appropriately considers the impact on the industry and the corresponding safety benefits.

The proliferation of the much larger production and gathering lines necessary for the development of unconventional oil and natural gas resources was not considered when PHMSA last applied its risk-based approach to gathering lines, which is why Congress directed PHMSA to reevaluate the scope of federal pipeline safety regulation of onshore gathering lines. This review is ongoing, but unconventional producers do not object to the mandatory participation in POCS for their production and gathering lines as provided in HB 284. And neither does PIOGA.

However, nothing warrants a change in the results of PHMSA's risk-based approach to the regulation of conventional gathering lines, which is the basis for the existing exclusion in the PA One Call Law for Class 1 natural gas gathering lines and rural oil gathering lines. As Dan Weaver's testimony explains, neither the PUC, POCS nor the excavators/contractors have been able to produce any data showing the opposite. It is their burden to prove why the law should be changed to require our Class 1 gathering lines to now be enrolled in POCS. Although it is not our burden to prove why they should remain out of mandatory participation in the program until such time that the federal government mandates that they are included in the federal pipeline safety program in accordance with the risk-based approach, we have done so.

Part of that approach involves a cost-benefit analysis that appropriately considers the impact on the industry and the corresponding safety benefits. As a result of the informational hearing this Committee had on April 5, 2017, at which POCS' representatives provided information concerning POCS' operations and charges, the Legislative Budget and Finance Committee was directed to obtain additional information concerning these subjects, which in PIOGA's view includes the high costs of POCS' operations and the way these costs are charged to facility owners and excavators – such as the exclusion from being charged lower Mapped Rates if your lines cross a municipal boundary (there are nearly 23,000 municipalities in Pennsylvania), which many of Kriebel's and other conventional producers' lines do. PIOGA respectfully suggests that this Committee would be well served if the results of the review conducted by the Legislative Budget and Finance Committee were the source of another public hearing before this Committee considers a legislative proposal to reauthorize the PA One Call Law

PIOGA has provided information to that Committee, but suggests that the public would be better served if all the information concerning these issues were addressed in the “sunlight” of another public hearing. After all, only POCS’ representatives appeared at that April 5<sup>th</sup> hearing, and provided what PIOGA believes was clearly incomplete information, with the issues concerning Mapped Rates (addressed below) being the prime example.

Nonetheless, PIOGA respectfully suggests that the direct costs borne by facility owners are an appropriate consideration here because these costs cannot be separated from the recommendation contained within the legislation that all conventional oil and gas lines must participate in POCS. These direct costs include the costs of having lines registered with POCS when there is no excavation that impacts our lines, plus the operational costs of having to respond to tickets by sending out personnel to mark lines. Unlike regulated utilities, producers cannot pass these costs along to ratepayer customers.

In order to promptly respond and comply with the transmitted tickets, Kriebel’s experience indicates an approximate annual cost of \$84,000 broken down as follows:

| <b>Summary of Costs</b>  | <b>2015</b>            |
|--|------------------------|
| POCS   | \$17,040               |
| Locating Facilities for Transmitted Tickets  | \$39,440               |
| Administration and Responding to Transmitted Tickets                                     | \$10,600               |
| Supervisor Task for Responding to Design Tickets, Field Meetings, Oversight Audits, etc. | \$10,000               |
| Annual Software Costs for Mapping Facilities   | <u>\$6,840</u>         |
| <b>Annual Cost to Voluntarily Participate in POCS:</b>                                   | <b><u>\$83,920</u></b> |

This is a significant cost to be absorbed by conventional producers that provides no corresponding public safety benefits because many line hits are caused by excavators’ not using best practices or negligence, even when lines are marked.

This is one area where the focus of the PA One Call Law reauthorization bills should be – excavators’ non-compliance with the law. One reason enforcement authority is proposed to be transferred from the Department of Labor and Industry is the Auditor General’s November 2010

report determination that, according to the press release, the Department “failed to consistently verify whether excavators made a required ‘one-call’ to notify the PA One Call System of plans to perform excavation or demolition work; failed to hold excavators and businesses accountable to safety standards by failing to consistently enforce administrative penalties on violators of the law; and failed to investigate reported incidents in a timely manner.” Even POCS’ “User Guide” (copy included with my testimony) states (p.3):

Damage to buried utilities most often occurs when excavators do not call for utility locations before they dig. This isn’t the only cause, however. Damage also seems to occur immediately after the excavator believes the following:

‘Just one last bucket;’ or  
‘There can’t be anything way out here;’ or  
‘I know they’re ‘XX inches’ deep’

In many cases, utilities are damaged even after calls are made and locations clearly marked.

Depth of a line is unknown, and care within the tolerance zone as recommended by prudent practices must be exercised. The failure to exercise care and use prudent practices caused a hit recently to one of Kriebel’s lines. In late April, a Kriebel 2 inch plastic production line enrolled in POCS and marked was damaged when the backhoe operator continued to dig with powered equipment past the dig area (within 18 inches of the marked line) and the backhoe bucket cut the line. Fortunately this incident didn’t result in loss of life or significant injuries or even property damage, which helps to prove our point about the *de minimis* public safety risk of these conventional lines.

I mentioned Mapped Rates earlier, and want to address a 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.” Currently, participation in this online application tool is voluntary, and marketed by POCS as a way for facility owners to reduce the number of locate request notifications they receive and thereby reduce their costs.

However, POCs does not readily disclose that this reduced cost benefit is limited to lines that do not cross a municipal boundary. For all POCS’ discussion of mapping and Mapped Rates at this Committee’s April 5<sup>th</sup> informational hearing, POCs did not mention this significant limitation. POCS’ Member Mapping brochure (copy included with my testimony) also doesn’t

mention it. And in a recent Pittsburgh Post-Gazette POWERSOURCE article<sup>1</sup> highlighting how POCS is now all based on mapping, the municipal lines limitation is not even mentioned.

We are unaware of a legitimate reason for not allowing all facility owners who map their lines to be charged the Mapped Rates, especially the smaller facility owners. After all, the implication presented by POCS' testimony and materials is that all facility owners that map their lines are charged Mapped Rates. POCS' 2007 Rate Study is the last one conducted and the one that POCS says supports its current rate structure as complying with the PA One Call Law's requirement that POCS' operation costs be shared by facility owner members in an "equitable" manner for services received. This Rate Study also recommends (p.15) that "[s]hould a method or technology be developed for POCS to minimize the area (i.e., grid) of municipal activity, a review should be conducted to examine the impact of applying the municipal activity by grid to the top customers of POCS." It seems to PIOGA that the method or technology has been developed but that no such review has been undertaken. This Study also stated that "[t]he impact of charging the municipal mapping rate to the smaller facility owner members has little impact on the overall financial integrity of the One Call System." Kriebel and other PIOGA member producers serve less than 2,500 customers.

Also, HB 284's new provision leaving participation in POCS' Member Mapping Solutions to the unbridled discretion of POCS board of directors – which does not have a conventional producer member – should be removed and replaced with more legislative direction. PIOGA welcomes the opportunity to address this issue more fully and cites this as another reason why the Committee should hold another public hearing to review the report and recommendations from the Legislative Budget and Finance Committee.

### **PIOGA recommendations**

- The proposed deletion of the sentence in the PA One Call Law definition of "line or facility" excluding production and gathering facilities from mandatory participation in the PA One Call system – which is consistent with existing federal pipeline safety law – should be

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<sup>1</sup> <http://powersource.post-gazette.com/in-the-lead/itl-2017-companies/2017/05/25/Pennsylvania-One-Call-s-groundbreaking-vision-in-the-lead-companies/stories/201705260024>

rejected and modified to apply only to conventional production and gathering lines, for the reasons set forth above.

- In the alternative, mandatory participation in POCS for production and gathering facilities should 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.

- Section 5 (duties of excavators) should be amended to make use of the stated best practices mandatory, as follows:

(4) . . . Within the tolerance zone the excavator shall employ prudent techniques, which [may] SHALL include hand-dug test holes, VACUUM EXCAVATION OR OTHER SIMILAR DEVICES to ascertain the precise position, INCLUDING DEPTH, of such facilities. . . .

(15) When the information required from the facility owner under [clause (5)(i) of section 2] section 2(a)(5)(i) cannot be provided or, due to the nature of the information received from the facility owner, it is reasonably necessary for the excavator to ascertain the precise location of any line or abandoned or unclaimed lines by prudent techniques, which [may] SHALL include hand-dug test holes, vacuum excavation or other similar devices, . . . .

- The municipal boundary limitation for being charged Mapped Rates should be eliminated. At the very least, Mapped Rates should be charged to facility owner members serving less than 2,500 customers consistent with the 2007 Rate Study that POCS uses to justify its current rate structure.

The Kriebel Companies and PIOGA appreciate this opportunity to provide their position and recommendations on these issues of vital importance to PIOGA and its conventional producer members, and we are available to respond to any questions Committee members have concerning this testimony or the subject matter of HB 284.