

**PUBLIC HEARING**

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TOWN OF PENDLETON

PUBLIC HEARING  
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Public hearing held at the Town of  
Pendleton Town Hall, 6570 Campbell Boulevard,  
Pendleton, New York, on May 25, 2017, commencing at  
7:07 p.m., before JOAN M. METZGER-HUBBELL, CRR,  
RMR, RPR, Notary Public.

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PRESENT FOR EMPIRE PIPELINE,  
APPLICANT:

PHILLIPS LYTLE LLP,  
By ADAM S. WALTERS, ESQ.,  
One Canalside,  
125 Main Street,  
Buffalo, New York 14203-2887,  
(716) 847-8400,  
awalters@phillipslytle.com.

PRESENT FOR TOWN OF PENDLETON  
ZONING BOARD OF APPEALS:

WOLFGANG BUECHLER - Chairman  
DENNIS WELKA  
JAMES MEHOLICK  
JAMES SCHLEMMER  
LEE DAIGLER

EDWARD P. PERLMAN, ESQ.,  
Counsel for Zoning Board of Appeals

ALSO PRESENT: MEMBERS OF THE PUBLIC

18:34:21 1           **MR. BUECHLER:** All right. Sorry for the  
19:07:56 2 late start. I wanted to make sure we had a copy of  
19:07:59 3 the sign-in sheet.

19:08:11 4           All right. Thank you for coming tonight,  
19:08:13 5 and welcome. We're here tonight to listen to the  
19:08:17 6 application of Empire Pipeline, Inc. The summary,  
19:08:21 7 just a quick summary of the application, is that  
19:08:24 8 they request a determination that it is an  
19:08:27 9 essential service under the Town Code Section 247-4  
19:08:31 10 or, in the alternative, request a use variance to  
19:08:35 11 place, construct, and/or operate a natural gas  
19:08:37 12 compressor facility on the site. The property is  
19:08:40 13 approximately 20 acres and zoned light industrial.

19:08:45 14           Just as a review of the agenda, the  
19:08:48 15 applicant's going to be provided the opportunity to  
19:08:50 16 give us a verbal input on the application itself.  
19:08:53 17 He's already submitted written application.

19:08:56 18           **UNIDENTIFIED SPEAKER:** Can you speak up?

19:08:57 19           **MR. BUECHLER:** I will try. Sorry that we  
19:08:58 20 don't have microphones in this place.

19:09:01 21           We'll take public comments after the  
19:09:03 22 applicant has provided us input. Based on the  
19:09:06 23 signup sheet that you all signed, we will run a

19:09:10 1 time limit on the applications, although we don't  
19:09:13 2 have a lot of people signed up so we should  
19:09:16 3 probably be reasonably flexible on the time limit.

19:09:20 4 Okay. I'm reminded that I need to call the  
19:09:23 5 meeting to order, so we're calling the meeting to  
19:09:25 6 order, and that we have a quorum of our members  
19:09:28 7 present. We should probably take a roll call.

19:09:31 8 Dennis.

19:09:32 9 **MR. WELKA:** Here.

19:09:33 10 **MR. BUECHLER:** Tim Meholick.

19:09:34 11 **MR. MEHOLICK:** Here.

19:09:35 12 **MR. BUECHLER:** Wolfgang Buechler.

19:09:36 13 Jim Schlemmer.

19:09:38 14 **MR. SCHLEMMER:** Here.

19:09:38 15 **MR. BUECHLER:** Lee Daigler.

19:09:39 16 **MR. DAIGLER:** Here.

19:09:39 17 **MR. BUECHLER:** All right. That's the full  
19:09:42 18 Zoning Board of Appeals for the Town of Pendleton.

19:09:45 19 So what I was just saying was that we  
19:09:47 20 planned a time limit. We're going to be reasonably  
19:09:50 21 generous on the time limit because there's not a  
19:09:52 22 lot of sign-ups, so right now I would say that we  
19:09:54 23 should expect to have a -- give us input in the

19:09:56 1 neighborhood of five minutes. We should be pretty  
19:09:58 2 good with that.

19:10:02 3           Miscellaneous topic, time to take your cell  
19:10:05 4 phones out and make sure that they're set on  
19:10:07 5 vibrate. I'm going to do the same thing. It's a  
19:10:10 6 small room. It's hard to hear in here obviously.  
19:10:14 7 Somebody just asked me to try to speak up, and so  
19:10:16 8 side discussions cause a lot of trouble in this  
19:10:19 9 room. So please, if you're going to have a side  
19:10:21 10 discussion, take it out in the hall and take it far  
19:10:24 11 down the hall so it doesn't disrupt the meeting.

19:10:26 12           A comment on common courtesy. There's going  
19:10:29 13 to be people up here talking. There's probably  
19:10:32 14 people who are pro the applicant's application and  
19:10:34 15 there's probably people against it. There's no  
19:10:36 16 reason to actually be discourteous for either type  
19:10:40 17 of person speaking, so please show that courtesy.

19:10:44 18           We plan on accepting written comments after  
19:10:47 19 the meeting. Right now we'll decide for sure what  
19:10:51 20 the deadline on that is, but right now I'm  
19:10:54 21 proposing a deadline of the 16th. After we take  
19:10:58 22 public comments, we'll tell you what that deadline  
19:11:00 23 will be.

19:11:01 1           Whatever deadline we set, the postmark, if  
19:11:04 2 you mail it, will be used as the determination of  
19:11:06 3 the date, or you can certainly hand deliver to the  
19:11:10 4 town clerk's office, and they'll forward it to us.  
19:11:12 5 And as a reminder, the town clerk's office closes  
19:11:16 6 at 4 o'clock, so if you plan on coming on the very  
19:11:19 7 last day, be here before 4 o'clock.

19:11:21 8           With that, we're ready for you.

19:11:24 9           **MR. WALTERS:** Great. Thank you,  
19:11:25 10 Mr. Chairman. For the record, my name is Adam  
19:11:28 11 Walters. I'm an attorney at Phillips Lytle  
19:11:31 12 representing Empire Pipeline, Inc. With me here  
19:11:34 13 tonight from the Empire team we have Mike Kasprzak,  
19:11:38 14 Josh Wendt, Ken Webster, I see Pat Kelly, and Karen  
19:11:43 15 Merkel, for the record.

19:11:46 16           As the chair indicated, tonight is a public  
19:11:50 17 hearing on our appeal to the ZBA. It has two  
19:11:54 18 components, the first component being an appeal of  
19:11:56 19 the determination of the building inspector that  
19:11:58 20 the facility is not an essential service; the  
19:12:01 21 second being, in the alternative, a request for a  
19:12:05 22 use variance.

19:12:08 23           Let me take a moment just to highlight the

19:12:10 1 compressor station itself. It's a  
19:12:13 2 22,214-horsepower compressor station and related  
19:12:17 3 equipment. It is on a 20-acre parcel. The map I  
19:12:22 4 have up here, for the record, is Exhibit B to the  
19:12:25 5 April 12th submittal, our application materials.

19:12:30 6 It's a -- it's an aerial overview of the  
19:12:34 7 general area of the proposed project site on  
19:12:36 8 Killian Road. The exact location is 4281 Killian  
19:12:41 9 Road.

19:12:43 10 The facility went through an extensive site  
19:12:46 11 plan review process with the Town Planning Board.  
19:12:49 12 That lasted for approximately 14 months. With the  
19:12:52 13 Planning Board, we worked to address concerns  
19:12:56 14 regarding noise from the facility, air emissions  
19:12:59 15 from the facility, lighting, aesthetics,  
19:13:03 16 landscaping and screening, and limitations on  
19:13:05 17 additional development on the site, amongst other  
19:13:08 18 things.

19:13:08 19 If I can, I'll just take a few moments to  
19:13:11 20 run through the plan. This is Killian Road. The  
19:13:15 21 facility is in an existing farm field. Right now  
19:13:18 22 that's a farm field. The area of development is  
19:13:23 23 approximately five acres on the 20-acre site, and

19:13:27 1 the Planning Board had imposed a condition of  
19:13:30 2 approval that the facility, Empire, would put deed  
19:13:36 3 restrictions on the rest of the property that would  
19:13:38 4 prohibit above-ground development.

19:13:40 5 The -- from an aesthetic perspective, a  
19:13:44 6 number of berms were put in to help with screening  
19:13:46 7 of the facility. The facility itself sits in the  
19:13:49 8 middle of the property. We tried to locate it in a  
19:13:53 9 way that would be very visually unobtrusive on this  
19:13:56 10 20-acre site.

19:13:57 11 The landscaping plan -- and for the record,  
19:14:02 12 the site plan and the landscaping plan are Exhibit  
19:14:05 13 E to the April 12th submittal. The landscaping  
19:14:09 14 plan was developed in close conjunction with  
19:14:11 15 feedback from the Planning Board. It proposes  
19:14:15 16 hundreds of new trees on the site, along the berms,  
19:14:20 17 along the edges. In addition, the treeline, the  
19:14:23 18 existing hedgerow treeline that is I think  
19:14:26 19 something like 40, 50 feet tall, will be preserved  
19:14:29 20 on the -- that's the west side of the property.

19:14:33 21 The --

19:14:35 22 **MR. BUECHLER:** Where's Killian Road on that?

19:14:37 23 **MR. WALTERS:** Killian Road would be right



19:14:39 1 here. So the driveway was actually given a bit of  
19:14:42 2 a turn so you can't see straight up the driveway  
19:14:45 3 and see the facility. We've got trees and berming  
19:14:47 4 along the front, trees along the side, again, to  
19:14:51 5 screen the facility. Additional trees put in here.  
19:14:54 6 And I forgot what the exact number count, but it  
19:14:58 7 was over 300 trees that were proposed to be planted  
19:15:01 8 as part of the project.

19:15:03 9 The screening and aesthetics were really one  
19:15:09 10 of the central issues we had as we were before the  
19:15:13 11 Planning Board. Those issues also were highlighted  
19:15:16 12 during FERC hearings that were held on the proposed  
19:15:18 13 facility over the last two years. So as part of  
19:15:22 14 that process, an extensive stealthing project was  
19:15:28 15 come up with, was developed to screen the facility  
19:15:32 16 to appear as barns and silos. So rather than an  
19:15:37 17 industrial look, the facility will be all enclosed  
19:15:40 18 within buildings.

19:15:41 19 We did several photo renderings. These are  
19:15:44 20 found at Exhibit D to the April 12th submittal, and  
19:15:48 21 these renderings, this particular rendering is what  
19:15:51 22 the facility will look like from Killian Road.

19:15:54 23 So this is at the base of the driveway.

19:15:56 1 Again, the driveway has been curved to keep from  
19:15:59 2 being able to see directly at the facility with  
19:16:03 3 berming, screening, trees, and maintenance of the  
19:16:06 4 existing treeline.

19:16:07 5           So the bottom line, there was a lot of time  
19:16:10 6 and attention paid to the layout of the facility,  
19:16:13 7 the aesthetics of the facility, and addressing  
19:16:17 8 issues. The Planning Board had the town engineer,  
19:16:21 9 GHD, involved in every meeting. GHD reviewed all  
19:16:23 10 the noise reports, the storm water reports, the  
19:16:26 11 wetland reports, everything prior to site plan  
19:16:29 12 approval.

19:16:30 13           To put the project in context, the project  
19:16:33 14 is part of a Northern Access 2016. Northern Access  
19:16:38 15 2016 is a new pipeline from northern Pennsylvania  
19:16:40 16 to Elma, New York. Our Porterville Compressor  
19:16:45 17 Station is located in Elma. The pipeline will end  
19:16:48 18 at Elma, and then additional improvements get made  
19:16:51 19 throughout the system, including the compressor  
19:16:53 20 station in Pendleton. There's also a Wheatfield  
19:16:58 21 facility, a dehydration facility, and a new  
19:17:03 22 in-connect or interconnect in the Town of Wales.

19:17:05 23           The process has been going on for a little

19:17:11 1 over three years with FERC. FERC in I believe it  
19:17:15 2 was February of this year issued a certificate of  
19:17:18 3 necessity in public convenience for the project.

19:17:22 4 As I've said in my submittals, but it bears  
19:17:25 5 repeating, FERC has exclusive jurisdiction over  
19:17:28 6 interstate pipeline facilities. Nonetheless,  
19:17:31 7 National Fuel has adopted a policy of going through  
19:17:34 8 local zoning processes. We did it in Wheatfield,  
19:17:37 9 we did it in Elma, and we did it in Wales.

19:17:40 10 It's an opportunity for local concerns to  
19:17:43 11 get put into the process. We find that with the  
19:17:47 12 FERC process not everybody in a local community  
19:17:50 13 will have heard about FERC hearings, public  
19:17:53 14 meetings, not had an opportunity to participate.

19:17:55 15 I think Pendleton has been very active in  
19:17:57 16 the participation of the FERC process. But, again,  
19:18:00 17 we find these local review processes a great  
19:18:05 18 opportunity to hear about local concerns and work  
19:18:07 19 to address them, and that's exactly what we did  
19:18:10 20 with the Planning Board over the 14-month process  
19:18:13 21 we were in front of them.

19:18:15 22 The -- as I noted before, and as the  
19:18:19 23 chairman noted, we really have two issues. Is the

19:18:22 1 facility an essential service, and if not, is the  
19:18:25 2 facility entitled to a use variance under the  
19:18:29 3 relaxed zoning standard for utilities.

19:18:31 4           So before I get to that, I did earlier this  
19:18:35 5 week provide an additional submittal. We had  
19:18:38 6 brought a court reporter to the April board  
19:18:42 7 meeting. It was largely just a process discussion  
19:18:45 8 amongst the board about the project and how the  
19:18:47 9 variances would be handled, but we did have a court  
19:18:51 10 reporter, so we provided that transcript.

19:18:53 11           We also provided -- I wanted the board to  
19:18:56 12 know that Empire has, since our last appearance,  
19:18:59 13 has closed on the property, has acquired the  
19:19:02 14 property. So that was on May 5th, and we provided  
19:19:06 15 you the documentation. Prior to that, we had been  
19:19:08 16 operating under a letter of authorization from the  
19:19:11 17 former -- now former owner, Tonawanda Sportsmen's  
19:19:16 18 Club. We are now the owner of that property.

19:19:18 19           We also -- I really -- after our last  
19:19:21 20 meeting, it occurred to me that at the end of the  
19:19:24 21 day, this is a very legal issue. We're talking a  
19:19:27 22 lot about case law, and I know the Zoning Board of  
19:19:32 23 Appeals is used to applying its tests, its area

19:19:32 1 variance tests, its use variance tests.

19:19:34 2           This is a little different so I really  
19:19:36 3 wanted to spend some time trying to break down  
19:19:39 4 those cases and explain at least our view why they  
19:19:44 5 support the proposition that we are permitted use  
19:19:49 6 and entitled to a use variance.

19:19:51 7           So my May 23rd letter also did a very  
19:19:55 8 detailed analysis of the two cases we had  
19:19:57 9 previously cited in our initial submittal, the  
19:20:01 10 Con Ed/Hoffman case and the Verizon/Rosenburg case.

19:20:06 11           We also -- since our last appearance, the  
19:20:09 12 U.S. Chamber of Commerce issued a report  
19:20:12 13 highlighting the significant challenges our  
19:20:14 14 communities face due to the lack of pipeline  
19:20:17 15 infrastructure in New York. To us it really helps  
19:20:20 16 highlight why the compressor station is an  
19:20:22 17 essential service. So that was tab D of my May  
19:20:26 18 23rd submittal. And we hope that you'll give that  
19:20:29 19 consideration as you evaluate our application.

19:20:34 20           On the essential services issue, the site is  
19:20:39 21 located in the town's light industrial district.  
19:20:42 22 Permitted uses in the light industrial district  
19:20:45 23 include, quote/unquote, essential services.

19:20:47 1           The first appeal before the board is that  
19:20:51 2 the compressor station as part of an interstate  
19:20:55 3 natural gas pipeline is an essential service. The  
19:20:57 4 courts have established standards for interpreting  
19:21:01 5 zoning codes. Unambiguous language should be  
19:21:04 6 construed to give effect to the plain meaning of  
19:21:06 7 the language. However, zoning regulations are in  
19:21:08 8 derogation of the common law and must be strictly  
19:21:12 9 construed against the municipality that has enacted  
19:21:15 10 and seeks to enforce them.

19:21:17 11           Accordingly, and this is a direct quote from  
19:21:19 12 case law and, again, I've provided that for you, a  
19:21:23 13 ZBA must resolve ambiguities in the language of  
19:21:26 14 such regulations against the municipality and in  
19:21:28 15 favor of the property owner or applicant, and there  
19:21:31 16 were several cases on point on that, and that's in  
19:21:34 17 my May 23rd submittal.

19:21:36 18           The town's code defines essential services  
19:21:39 19 as the erection, construction, alteration, or  
19:21:43 20 maintenance by public utilities or municipal or  
19:21:46 21 other governmental agencies of gas, electrical,  
19:21:50 22 steam, water, sewage, and communication systems and  
19:21:54 23 facilities. Railroad trackage in facilities and

19:21:57 1 bus shelters shall also be considered as providing  
19:22:00 2 essential service.

19:22:02 3           So under the code, an essential service is  
19:22:06 4 two parts. First, it must include the erection,  
19:22:09 5 construction, alteration, or maintenance of gas,  
19:22:11 6 electrical, steam, water, sewage, and/or  
19:22:14 7 communication systems and facilities. And, second,  
19:22:17 8 the entity involved must be a public utility, a  
19:22:21 9 municipality, or other governmental agency.

19:22:24 10           I don't think there's any serious debate  
19:22:27 11 that on the first issue, the compressor station  
19:22:29 12 involves the construction of gas facilities. It's  
19:22:32 13 a natural gas pipeline. The facility, the  
19:22:35 14 compressor station is an inherent part of that  
19:22:38 15 pipeline.

19:22:38 16           The issue is whether Empire is a public  
19:22:42 17 utility. Now, the code does not have a definition  
19:22:45 18 of public utility, which is part of the problem  
19:22:49 19 when the building inspector's determination -- with  
19:22:53 20 the building inspector's determination. In  
19:22:55 21 essence, his letter says that because the facility  
19:22:59 22 does not provide direct service to end users in the  
19:23:03 23 Town of Pendleton, the compressor station cannot be

19:23:09 1 a utility and, therefore, is not an essential  
19:23:13 2 service.

19:23:13 3           However, as we pointed out in our submittal,  
19:23:16 4 nowhere does the code contain any indications that  
19:23:19 5 there is a need to provide service to an end user  
19:23:22 6 in the town in order to qualify as essential  
19:23:25 7 services.

19:23:26 8           To the contrary, the inclusion of railroad  
19:23:30 9 trackage and the definition of essential services  
19:23:33 10 is a clear indication that end users are not  
19:23:36 11 required since railroad lines that run through  
19:23:38 12 would serve end users in other communities.

19:23:41 13           At best the term is ambiguous, and as I  
19:23:45 14 highlighted earlier, if the term is ambiguous, it  
19:23:48 15 must be interpreted in favor of the property owner.

19:23:50 16           We have also pointed out in our submittal  
19:23:53 17 that in the zoning context, the New York Court of  
19:23:57 18 Appeals has developed a definition of public  
19:23:59 19 utilities in a line of cases somewhat similar to  
19:24:02 20 the issue here, which is when a community tries to  
19:24:05 21 exclude a utility using its zoning laws. That is,  
19:24:09 22 the Hoffman and the Rosenberg case.

19:24:12 23           Again, I provided a detailed explanation of



19:24:15 1 both of those cases. In a nutshell, those cases  
19:24:18 2 establish the principle that communities cannot use  
19:24:20 3 zoning laws to exclude utilities.

19:24:22 4 The Court of Appeals has articulated a  
19:24:26 5 three-part test for defining a utility, and we  
19:24:29 6 believe the compressor station fits squarely within  
19:24:32 7 those -- those characteristics that the -- the  
19:24:35 8 Court articulated.

19:24:36 9 The first is the essential service -- excuse  
19:24:39 10 me, the first is the essential nature of the  
19:24:42 11 services offered. Empire is an interstate pipeline  
19:24:45 12 which supplies natural gas. Among Empire's  
19:24:48 13 customers is NYSEG, which supplies natural gas to  
19:24:53 14 residential customers in Pendleton.

19:24:55 15 This is certainly an essential type of  
19:24:57 16 service. In fact, federal legislation, the Natural  
19:25:00 17 Gas Act, has been enacted to place limits on local  
19:25:03 18 regulations that prohibit or unreasonably delay the  
19:25:06 19 construction or operation of facilities like the  
19:25:08 20 compressor station which have been approved by  
19:25:11 21 FERC.

19:25:11 22 I would also highlight again the U.S.  
19:25:14 23 Chamber report which highlights the essential role

19:25:17 1 that gas pipelines play in our economy and our --  
19:25:21 2 the growth of our region.

19:25:22 3           The second characteristic is the operation  
19:25:26 4 under a franchise subject to some measure of public  
19:25:29 5 regulation. Empire as a natural gas company  
19:25:33 6 operates under authority and regulation of FERC and  
19:25:36 7 enjoys the power and privilege of eminent domain.  
19:25:39 8 In fact, Empire's FERC certificate here, which  
19:25:42 9 again was issued in February, specifically  
19:25:44 10 authorizes it to use eminent domain to facilitate  
19:25:49 11 construction of the project, including the  
19:25:50 12 facility.

19:25:50 13           The third characteristic, logistic problems  
19:25:54 14 such as the fact that the product of the utility  
19:25:56 15 must be piped. There are other things that it  
19:25:59 16 must -- that also qualify, but I stopped at piped  
19:26:02 17 because this is a pipeline. Pipelines represent  
19:26:07 18 exactly the type of logistic distribution issues  
19:26:11 19 that the Court of Appeals noted qualifies as the  
19:26:14 20 character of the utility.

19:26:15 21           In summary, from our perspective, the  
19:26:17 22 compressor station constitutes essential services  
19:26:20 23 as defined under the Town Code because it is

19:26:22 1 necessary for the distribution of natural gas and  
19:26:25 2 because Empire qualifies as a public utility really  
19:26:28 3 for two reasons. First, because the Town of  
19:26:31 4 Pendleton's zoning code doesn't define public  
19:26:34 5 utilities but includes examples which go well  
19:26:37 6 beyond traditional utilities to include things like  
19:26:40 7 railroads, and I think I mentioned earlier bus  
19:26:43 8 service shelters, and to the extent the code is  
19:26:45 9 ambiguous, it must be interpreted in favor of the  
19:26:48 10 landowner.

19:26:48 11           Second, because Empire Northern Access  
19:26:52 12 Pipeline meets the three characteristics of the  
19:26:53 13 utility as articulated by our Court of Appeals,  
19:26:57 14 again, it would meet the definition of essential  
19:27:00 15 service.

19:27:00 16           That's -- that's the key summary of very  
19:27:05 17 lengthy submittals I put there. I tried to keep it  
19:27:08 18 high level. I know we have a lot of people who  
19:27:11 19 want to talk tonight.

19:27:12 20           We do have in the alternative a request for  
19:27:15 21 a use variance. I know the Board is used to  
19:27:18 22 applying the hardship test, no reasonable rate of  
19:27:21 23 return on the property, for a use variance.

19:27:23 1           As I stated in my materials, the traditional  
19:27:27 2 hardship standard doesn't apply to utilities. That  
19:27:31 3 is, directly those two cases, Hoffman, Con Ed v.  
19:27:36 4 Hoffman, and the Rosenberg case. Again, I provided  
19:27:40 5 a detailed breakdown. I won't go into those in any  
19:27:43 6 detail.

19:27:44 7           What those courts did say, however, is that  
19:27:49 8 a utility need show there's a need for its  
19:27:55 9 facilities and that there's no less intrusive  
19:27:57 10 alternative available. Those are the two tests  
19:27:59 11 under the relaxed standard.

19:28:01 12           In terms of the need for the compressor  
19:28:03 13 station, we have a FERC certificate establishing  
19:28:06 14 the need for the facility. The town -- I would  
19:28:10 15 point out that during the FERC review process, the  
19:28:13 16 town, and I know the attorney for the town is here  
19:28:16 17 tonight, filed multiple objections to the location  
19:28:19 18 of this facility at this site, citing, amongst  
19:28:23 19 other things -- well, a host of things, and  
19:28:28 20 including a lack of need for the facility. And  
19:28:32 21 FERC soundly rejected all of those objections in  
19:28:36 22 issuing its certificate.

19:28:37 23           In terms of alternatives, a detailed

19:28:40 1 alternatives analysis was part of the FERC process.  
19:28:44 2 The process concluded that there are no  
19:28:45 3 alternatives -- that any alternatives that were  
19:28:49 4 offered were more impactful to the community. That  
19:28:52 5 includes the original location which was a  
19:28:55 6 residential location before it was moved to Killian  
19:28:58 7 Road.

19:29:00 8 In essence, I would say we have provided --  
19:29:03 9 we've tried to provide a very thorough analysis of  
19:29:07 10 the issues in our submittals. I know they can be a  
19:29:10 11 little long, but I just encourage the Board to  
19:29:12 12 digest those. I guess I'll say rather than go into  
19:29:17 13 any more detail, I know there are folks who want to  
19:29:19 14 speak tonight, we'd certainly like to hear what  
19:29:22 15 people have to say. So unless the Board has any  
19:29:24 16 questions for me, I will sit down.

19:29:29 17 **MR. BUECHLER:** You mentioned that the  
19:29:31 18 pipeline goes into Western New York up to Empire  
19:29:34 19 Pipeline. Can you talk a little bit about the  
19:29:36 20 customer base for Empire Pipeline.

19:29:40 21 **MR. WALTERS:** For -- in terms of -- so  
19:29:44 22 Empire is an interstate gas pipeline, and for  
19:29:50 23 custom issues I think we can keep it very high

19:29:53 1 level, but I'll ask one of my colleagues to join me  
19:29:56 2 from the National Fuel team to just highlight  
19:30:00 3 briefly the customer zone.

19:30:09 4 **KENNETH WEBSTER:** Ken Webster. I'm an  
19:30:11 5 attorney for National Fuel. At the highest levels,  
19:30:18 6 I mean, the customers for Empire are going to be  
19:30:21 7 local distribution companies as well as industrial  
19:30:25 8 users along with interconnections to other  
19:30:28 9 interstate pipeline companies. That's the customer  
19:30:31 10 mix. I don't have statistics as to the breakdown  
19:30:35 11 but --

19:30:36 12 **MR. BUECHLER:** What's the geographic range?

19:30:38 13 **MR. WALTERS:** Of Empire?

19:30:40 14 **MR. BUECHLER:** Of where -- yeah, where the  
19:30:42 15 potential distribution is.

19:30:45 16 **KENNETH WEBSTER:** East -- approximately to  
19:30:47 17 the east, approximately the Syracuse area, and to  
19:30:49 18 the west, near Grand Island.

19:30:51 19 **MR. WALTERS:** Right. But I think we did  
19:30:53 20 note in our submittal materials that the pipeline,  
19:30:56 21 the Empire Pipeline, connects to other pipelines.

19:30:59 22 **KENNETH WEBSTER:** That's right.

19:31:00 23 **MR. WALTERS:** So to the extent that gas is

19:31:01 1 transferred to another pipeline, that pipeline may  
19:31:04 2 distribute that gas much further. So some of this  
19:31:06 3 gas, I think we talked about at various meetings,  
19:31:09 4 may go to New England, some to Canada. From Canada  
19:31:12 5 it can go back to Detroit and come back into the  
19:31:15 6 U.S. It moves around quite a bit.

19:31:19 7 **KENNETH WEBSTER:** I mean, a third of the gas  
19:31:20 8 associated with this project is being delivered to  
19:31:21 9 Tennessee Gas, and Tennessee Gas is delivering gas  
19:31:24 10 along the -- along other pipeline destination  
19:31:27 11 points in the northeast so --

19:31:29 12 **MR. WALTERS:** And that interconnect station  
19:31:30 13 we did in the Town of Wales was an interconnect to  
19:31:34 14 the Tennessee pipeline which runs right through the  
19:31:36 15 Town of Wales.

19:31:41 16 **MR. MEHOLICK:** Empire Pipeline transfers gas  
19:31:44 17 from point A to point B, correct? You're not  
19:31:46 18 drilling for gas? You're buying gas from companies  
19:31:49 19 in Pennsylvania and delivering it to I would say  
19:31:53 20 utilities such as National Fuel, NYSEG?

19:31:55 21 **KENNETH WEBSTER:** Yeah. Empire is purely a  
19:31:58 22 delivery system. We're not even purchasing gas.  
19:32:02 23 We're literally, similar to a highway system,

19:32:04 1 moving gas from point A to point B for a customer.

19:32:08 2 **MR. MEHOLICK:** Being a delivery system, why  
19:32:11 3 do you consider yourself a utility?

19:32:13 4 **MR. WALTERS:** Again, we go right back to the  
19:32:15 5 definition as articulated by the Court of Appeals.  
19:32:17 6 What is it we're distributing? We are a critical  
19:32:20 7 point in the distribution of natural gas.

19:32:22 8 **MR. MEHOLICK:** But you're not distributing  
19:32:24 9 it. You're transferring it --

19:32:24 10 **MR. WALTERS:** Absolutely.

19:32:25 11 **MR. MEHOLICK:** -- to National Fuel, and then  
19:32:27 12 they're delivering it to their customers.

19:32:29 13 **MR. WALTERS:** That is correct, and without  
19:32:31 14 us, natural gas can't get to National Fuel's  
19:32:35 15 customers. So critical supply in the pipeline and  
19:32:38 16 literally in the pipeline chain to provide natural  
19:32:42 17 gas to end users, there's no requirement, and,  
19:32:46 18 again, I'm going to point out that if the town had  
19:32:49 19 a concept of what a public utility should be, it  
19:32:52 20 ought to have included a definition of that in the  
19:32:56 21 zoning regulations.

19:32:58 22 Because you didn't, the term is left to us  
19:33:00 23 to guess as to what that means. We've articulated



19:33:03 1 what we think is a reasonable approach to  
19:33:06 2 understand what that is.

19:33:08 3 To be clear, and I think we've said more  
19:33:11 4 than several different ways in our materials and we  
19:33:14 5 will say here tonight, we do not distribute to  
19:33:16 6 residential customers. That is not the essence of  
19:33:19 7 a utility, and I will simply point out I think the  
19:33:24 8 building inspector's reliance on that was in error,  
19:33:27 9 and that is -- that is where we stand on that  
19:33:31 10 issue.

19:33:33 11 **MR. MEHOLICK:** What percentage of the gas  
19:33:35 12 that goes through the pipeline will reach  
19:33:38 13 Pendleton? Any feel for that?

19:33:40 14 **MR. WALTERS:** I would suggest that we do  
19:33:42 15 not, and we would -- we would be speculating if we  
19:33:44 16 threw that out. What we can absolutely tell you is  
19:33:47 17 that the entity, the utility that supplies  
19:33:51 18 residential customers in this town is a customer of  
19:33:54 19 ours. So if they don't get their gas from us,  
19:33:57 20 their customers do not get their gas.

19:34:00 21 **MR. MEHOLICK:** Okay. And how do you  
19:34:02 22 consider a compressor station as being part of the  
19:34:04 23 pipeline? I understand pipelines through

19:34:08 1 communities to deliver gas, but why do you consider  
19:34:10 2 that as part of the pipeline?

19:34:12 3 **MR. WALTERS:** Really good question. So  
19:34:14 4 two-part answer. First, a pipeline with natural  
19:34:18 5 gas, if that natural gas can't move, it's -- it's  
19:34:22 6 very ineffective. It's a pipeline that does not  
19:34:24 7 work. Compressor stations are necessary to move  
19:34:27 8 the gas. That's reason number one. It's an  
19:34:31 9 integral part of the pipeline system. Without it,  
19:34:33 10 the gas just sits in the pipeline and doesn't do  
19:34:36 11 anybody any good.

19:34:37 12 Two, FERC considers our facilities to be a  
19:34:41 13 part of the regulated interstate pipeline system.  
19:34:44 14 So when FERC issued the necessary certificate or  
19:34:47 15 the certificate of necessity for this project, they  
19:34:50 16 explicitly covered the Pendleton Compressor  
19:34:52 17 Station. They evaluated the necessity of that  
19:34:55 18 facility in this location and ruled that it was, in  
19:34:59 19 fact, necessary.

19:35:00 20 So it is both an integral part of the  
19:35:05 21 operation of the pipeline, as well as from a  
19:35:08 22 regulatory perspective, it is part of the pipeline  
19:35:11 23 that FERC regulates.

19:35:15 1           **MR. DAIGLER:** Why that size compressor  
19:35:17 2 station?

19:35:18 3           **MR. WALTERS:** Why that size compressor  
19:35:20 4 station?

19:35:20 5           **KENNETH WEBSTER:** I would leave that to --

19:35:23 6           **MR. WALTERS:** Let's make an engineer come up  
19:35:24 7 and answer that question.

19:35:31 8           **MR. MEHOLICK:** And why does it have to be in  
19:35:33 9 Pendleton as opposed to another location that is  
19:35:37 10 zoned for heavy industrial?

19:35:38 11           **MR. WALTERS:** I can take that one.

19:35:39 12           For the record, Mike Kasprzak.

19:35:42 13           **MICHAEL KASPRZAK:** I'm the assistant vice  
19:35:43 14 president for design and compressor stations and  
19:35:46 15 automation of electrical facilities.

19:35:49 16           **MR. WALTERS:** Size.

19:35:50 17           **MICHAEL KASPRZAK:** The size of the station  
19:35:52 18 is based on -- there's two items that control that.  
19:35:55 19 One is the pressure differential that you have to  
19:35:57 20 pump, the inlet pressure to the outlet pressure,  
19:36:00 21 and the other is the volume of gas that you have to  
19:36:03 22 pump. So those are the two design criteria that  
19:36:07 23 determine the horsepower and the number of units

19:36:10 1 that we need to move the gas. So that's a  
19:36:14 2 simplified version of that.

19:36:15 3 **MR. DAIGLER:** Now, it's 22,000 horsepower,  
19:36:19 4 and there's two stations?

19:36:21 5 **MICHAEL KASPRZAK:** There's two compressor  
19:36:22 6 units, each one approximately 11,000 horsepower.

19:36:26 7 **MR. DAIGLER:** Where else in your system is  
19:36:28 8 something very similar to this being of that  
19:36:31 9 magnitude?

19:36:33 10 **MICHAEL KASPRZAK:** In Oakfield, the Oakfield  
19:36:35 11 area.

19:36:36 12 **MR. DAIGLER:** There's a 22,000-horsepower  
19:36:40 13 compressor station in Oakfield?

19:36:42 14 **MICHAEL KASPRZAK:** Correct.

19:36:43 15 **MR. WALTERS:** What's the Hinsdale?

19:36:44 16 **MICHAEL KASPRZAK:** That's Oakfield. In  
19:36:45 17 Hinsdale, we have about 16,000 horsepower in  
19:36:48 18 Hinsdale.

19:36:49 19 **MR. WALTERS:** And Elma?

19:36:51 20 **MICHAEL KASPRZAK:** Elma is -- the proposed  
19:36:55 21 is about -- is about 5500 horsepower.

19:36:58 22 **MR. DAIGLER:** And the one in Oakfield is  
19:37:00 23 operational right now?

19:37:02 1           **MICHAEL KASPRZAK:** Operating today. Went in  
19:37:05 2 service --

19:37:05 3           **MR. DAIGLER:** And how close is it to this  
19:37:07 4 design concept that you have for Killian Road?

19:37:09 5           **MICHAEL KASPRZAK:** It's -- the configuration  
19:37:11 6 is slightly different because we have both  
19:37:14 7 compressor units housed in a single building.  
19:37:17 8 We've gone to individual enclosures for each --  
19:37:20 9 each compressor unit, and there's more -- there's a  
19:37:24 10 more -- more above-grade piping we bury. We're  
19:37:30 11 burying as much piping as we possibly can at this  
19:37:32 12 location for noise mitigation.

19:37:34 13           **MR. WALTERS:** All right. So the design of  
19:37:36 14 this facility is actually improved over the  
19:37:39 15 compressor station in Oakfield largely on noise  
19:37:43 16 mitigation. Individual buildings are burying as  
19:37:48 17 much pipeline as possible. I believe this facility  
19:37:50 18 also is going to have a lot more screening than the  
19:37:52 19 Oakfield facility.

19:37:54 20           **MICHAEL KASPRZAK:** Correct.

19:37:55 21           **MR. MEHOLICK:** Do both run at the same time,  
19:37:56 22 or is one standby and one is in production?

19:37:59 23           **MICHAEL KASPRZAK:** It just depends on what

19:38:00 1 our dispatch requirements are in the system. At  
19:38:03 2 that time it's designed for both compressor units  
19:38:05 3 to be able to run.

19:38:09 4 **MR. BUECHLER:** So you don't need both  
19:38:10 5 compressor plants to create the pressure, but  
19:38:12 6 you'll need it if you have the volume of flow?

19:38:15 7 **MICHAEL KASPRZAK:** Correct.

19:38:19 8 **MR. WALTERS:** And then I think the gentleman  
19:38:20 9 earlier asked about alternatives and why can't you  
19:38:23 10 go somewhere else. So as part of the FERC process,  
19:38:25 11 actually, we had an awful lot of alternatives  
19:38:28 12 suggested for this specific facility, most, not  
19:38:31 13 surprisingly, outside the Town of Pendleton.

19:38:34 14 The location does need to be in a certain  
19:38:36 15 place, in a certain geographical area in order to  
19:38:41 16 move the natural gas obviously, and what I can  
19:38:44 17 simply tell you is that in that process, FERC  
19:38:47 18 evaluated a number of different sites that were  
19:38:50 19 selected. Each were found to have more significant  
19:38:53 20 adverse environmental impacts. I believe a number  
19:38:58 21 of alternatives got closer to the -- some  
19:39:02 22 contaminated sites north of here. In each case  
19:39:06 23 they were ruled out as not viable.

19:39:08 1           So what we've done is we picked the heaviest  
19:39:12 2 industrial district you have, which is the light  
19:39:14 3 industrial district, and we also -- we looked at  
19:39:18 4 the definitions, and we felt quite clearly that  
19:39:21 5 this meets the definition of essential services, as  
19:39:24 6 defined in your code.

19:39:27 7           **MR. BUECHLER:** What additional pipeline is  
19:39:30 8 being created as part of this compressor plant?  
19:39:33 9 Obviously there isn't just an end pipe right there  
19:39:35 10 and another pipe right there.

19:39:38 11           **MR. WALTERS:** Good question. I'm going to  
19:39:39 12 ask one of the engineers to come back up. So  
19:39:48 13 additional pipeline necessary for the compressor  
19:39:51 14 station to be located here.

19:39:52 15           **MICHAEL KASPRZAK:** There is approximately  
19:39:53 16 one mile of pipe that will serve as the inlet to  
19:39:56 17 this facility and then approximately one mile of  
19:39:59 18 pipe that will serve as the outlet into the  
19:40:03 19 Empire -- into the existing Empire Pipeline  
19:40:05 20 facility.

19:40:05 21           **MR. BUECHLER:** Can you talk a little bit  
19:40:07 22 about the routing or maybe even from the aerial  
19:40:10 23 view that you had?

19:40:14 1           **MR. WALTERS:** I believe the exact routing is  
19:40:17 2 in our submission materials. It's both in the FERC  
19:40:20 3 environmental assessment as well as the reference  
19:40:22 4 to it in the FERC certificate. Let's see if we can  
19:40:27 5 get to the right page.

19:41:04 6           Okay. So on sheet 30 of 32 in tab H of the  
19:41:12 7 submittal, about halfway through the environmental  
19:41:16 8 assessment you will find a map of the -- it shows  
19:41:21 9 the Pendleton Compressor Station, and the area in  
19:41:24 10 blue is the pipeline. It gives you a sense it's  
19:41:28 11 sort of a north-south route relative to the  
19:41:31 12 compressor station.

19:41:34 13           **MR. BUECHLER:** Where is Killian on that?

19:41:36 14           **MR. WALTERS:** I believe --

19:41:37 15           **MR. BUECHLER:** Is it that diagonal?

19:41:39 16           **MR. WALTERS:** I believe it is the diagonal.  
19:41:43 17 So that's Killian right there. The diagonal is the  
19:41:47 18 old rail line.

19:41:48 19           **MR. BUECHLER:** Okay.

19:41:48 20           **MR. WALTERS:** So it shows up on the map as a  
19:41:52 21 rail line. So that's what that is.

19:41:54 22           **MR. BUECHLER:** Okay. Thank you.

19:41:55 23           **MR. WALTERS:** Sure.



19:41:56 1           **MR. DAIGLER:** Would you consider this like a  
19:41:59 2 booster station? I mean, like there's X pressure  
19:42:01 3 in and there's going to be an X pressure out?

19:42:01 4           **MICHAEL KASPRZAK:** Correct.

19:42:03 5           **MR. DAIGLER:** So the pressure out's going to  
19:42:05 6 be obviously higher than the pressure in?

19:42:07 7           **MICHAEL KASPRZAK:** Correct.

19:42:07 8           **MR. DAIGLER:** What are those pressures?

19:42:10 9           **MICHAEL KASPRZAK:** Approximately 500 pounds  
19:42:13 10 inlet to the station.

19:42:14 11           **MR. DAIGLER:** PSI.

19:42:15 12           **MICHAEL KASPRZAK:** Correct, and PSIG, and  
19:42:16 13 approximately a thousand pounds discharge.

19:42:17 14           **MR. DAIGLER:** So you're magnifying it by 2  
19:42:20 15 then, right?

19:42:20 16           **MICHAEL KASPRZAK:** Correct.

19:42:22 17           **MR. DAIGLER:** That's with both -- that's  
19:42:23 18 with your full capacity of 22,000 horsepower?

19:42:27 19           **MICHAEL KASPRZAK:** Yes. And it just depends  
19:42:29 20 on the -- as I said earlier, it just depends on the  
19:42:31 21 flow rate and how high -- how high the Empire  
19:42:35 22 Pipeline happens to be operating at that time.  
19:42:36 23 That will be what dictates it.

19:42:38 1           **MR. DAIGLER:** So when you're coming out with  
19:42:40 2 a thousand PSIG of gas out, is that going to run  
19:42:44 3 underground then right away?

19:42:46 4           **MICHAEL KASPRZAK:** Correct.

19:42:47 5           **MR. DAIGLER:** And what kind of safety  
19:42:49 6 concerns are there with that kind of pressure  
19:42:52 7 underground?

19:42:55 8           **MICHAEL KASPRZAK:** At the compressor  
19:42:56 9 station, we have -- we have safety systems in  
19:43:00 10 place, fire and gas detection, emergency shutdowns.

19:43:03 11           **MR. DAIGLER:** I mean, as far as the pipe,  
19:43:05 12 the bursting of the pipe or the leaking into the --

19:43:07 13           **MICHAEL KASPRZAK:** The pipe is designed with  
19:43:09 14 a safety factor to more than handle that particular  
19:43:11 15 pressure.

19:43:11 16           **MR. WALTERS:** So Empire transports natural  
19:43:15 17 gas across the state every day under high pressures  
19:43:18 18 underground. It's what they do. They have an  
19:43:20 19 incredible safety record.

19:43:21 20           **MR. DAIGLER:** At that pressure, though, or  
19:43:23 21 higher or lower?

19:43:24 22           **MICHAEL KASPRZAK:** At both. Both higher and  
19:43:26 23 lower.

19:43:26 1           **MR. WALTERS:** But I will also say that  
19:43:28 2 safety was an extensive discussion with the  
19:43:31 3 Planning Board. There's an extensive record before  
19:43:33 4 the Planning Board. If the Board wants to see some  
19:43:35 5 of that, I'd be happy to ship it over.

19:43:38 6           I would also suggest, though, that in the  
19:43:40 7 context of the issues before you, one, safety  
19:43:45 8 doesn't -- a safety analysis, and I'm certainly not  
19:43:48 9 suggesting that we haven't done a safety analysis.  
19:43:51 10 Again, there's tremendous information already  
19:43:53 11 existing in the Town of Pendleton files. We'll be  
19:43:56 12 happy to share that, but it's not necessarily  
19:43:59 13 relevant to the analysis that's here before you, is  
19:44:01 14 this an essential service.

19:44:03 15           And regulated utilities, we're talking, you  
19:44:07 16 know, distribution of electricity, that's a  
19:44:12 17 utility. Safety is not an issue in your test, in  
19:44:17 18 the definition of the code. It just goes beyond.  
19:44:19 19 It's a fair question. I'm not saying you shouldn't  
19:44:21 20 ask it. I'm just saying that that's not really  
19:44:25 21 relevant to the task that's before us.

19:44:27 22           And, again, if you want that information,  
19:44:31 23 the back-and-forths with the Planning Board, the

19:44:34 1 record on that as well as the comments from GHD,  
19:44:36 2 the town engineer, are extensive. And at the end,  
19:44:40 3 GHD did a memo on all issues of concern, including  
19:44:44 4 health and safety, air, noise, and they recommended  
19:44:48 5 approval of the facility.

19:44:51 6           There were, again, conditions imposed.  
19:44:54 7 Ironically, whether those conditions stay in place  
19:44:57 8 depends in part about what this Board does.  
19:45:02 9 There's currently a lawsuit pending against the  
19:45:04 10 town arguing that local laws are completely  
19:45:08 11 preempted. If that litigation proceeds, and,  
19:45:14 12 again, Mr. Abraham's here representing the town, if  
19:45:18 13 we're successful, and we strongly believe we will  
19:45:20 14 be, all local approvals, all local constraints go  
19:45:23 15 away.

19:45:24 16           So just for what it's worth.

19:45:27 17           **MR. BUECHLER:** If the compressor plant were  
19:45:29 18 not put here, so how far would the gas go? I mean,  
19:45:35 19 this is a hypothetical scenario clearly, but  
19:45:38 20 presumably the gas comes to Pendleton currently, or  
19:45:42 21 at least there's pipeline coming to Pendleton.

19:45:44 22           How far would the gas go before a compressor  
19:45:46 23 plant would be required to be sited?

19:45:51 1           **MR. WALTERS:** I guess I'll say that that's  
19:45:53 2 probably pretty speculative on our part, but the  
19:45:56 3 need for the facility was perhaps one of the  
19:46:00 4 central issues in the FERC certificate largely  
19:46:04 5 because of the concerns and alternatives suggested  
19:46:09 6 and different issues and ideas raised by the town  
19:46:12 7 and citizens who had intervened in that proceeding.

19:46:15 8           So the need for the facility I think is --  
19:46:18 9 I'm just going to say I think it's well  
19:46:21 10 established, and I hate to speculate on the record.

19:46:24 11           **MR. BUECHLER:** I understand that. So my  
19:46:26 12 next question's going to push you even farther.

19:46:31 13           If the plant weren't built, what's the  
19:46:35 14 impact to the customer base that is serviced with  
19:46:40 15 the gas in the existing companies that service the  
19:46:43 16 areas? Let's say Upstate Western New York we're  
19:46:48 17 talking about here, I guess. If there weren't this  
19:46:50 18 compressor plant to move this gas, what's the  
19:46:53 19 practical implication to the Upstate New York  
19:46:56 20 residents?

19:46:57 21           **MR. WALTERS:** Yeah, that's a really good  
19:46:59 22 question. So for the answer to that, I'm actually  
19:47:01 23 going to go back to that U.S. Chamber report that

19:47:04 1 we submitted on Monday which highlights --  
19:47:08 2 apparently there have been two pipelines recently  
19:47:10 3 in the last few years that have run into issues in  
19:47:15 4 the state, and so two pipelines have not been built  
19:47:18 5 or will not be built. Although, both are pursuing  
19:47:21 6 their legal rights, and this -- this facility is  
19:47:26 7 covered by that.

19:47:28 8           And it just highlights for you the long-term  
19:47:30 9 implications for the region and the state if this  
19:47:34 10 facility is not built, and there are real  
19:47:37 11 implications both in terms of growth, ability to  
19:47:42 12 meet our economic needs, generate jobs. Heat in  
19:47:47 13 the winter, it turns out, is a pretty critical  
19:47:50 14 factor, and we -- the reason for this pipeline is  
19:47:54 15 because there's currently a bottleneck. There's  
19:47:56 16 not enough natural gas coming into Western  
19:48:01 17 New York. A bottleneck is at the Porterville  
19:48:04 18 station, which is why the pipeline comes to  
19:48:06 19 Porterville.

19:48:09 20           And, again, I'll just iterate, FERC did take  
19:48:13 21 an awful long look at the issue of the need for the  
19:48:15 22 facility and has ruled -- determined that it is  
19:48:19 23 necessary.

19:48:23 1           **MR. WELKA:** Are you implying that if the  
19:48:26 2 pipeline and compressor are not constructed, then  
19:48:30 3 National Fuel and NYSEG and any other provider in  
19:48:33 4 this area would not be receiving gas?

19:48:39 5           **MR. WALTERS:** No.

19:48:40 6           **MR. WELKA:** That's what it sounded like.

19:48:42 7           **MR. WALTERS:** Obviously not. I'll simply  
19:48:44 8 say for the record, obviously not.

19:48:47 9           **MR. WELKA:** Okay.

19:48:48 10          **MR. WALTERS:** Thank you.

19:48:51 11          **MR. BUECHLER:** So that leads us to the  
19:48:54 12 question: What practical impact would there be if  
19:48:57 13 it were not provided?

19:48:58 14          **MR. WALTERS:** What practical impact would  
19:49:00 15 there be --

19:49:01 16          **MR. BUECHLER:** So clearly they'll have gas.  
19:49:03 17 They'll have gas from some source, so what  
19:49:07 18 detriment to their customer base would occur if the  
19:49:10 19 compressor plant were not available to move this  
19:49:14 20 pipeline's gas?

19:49:15 21          **MR. WALTERS:** Again, without this compressor  
19:49:18 22 station, the pipeline will not be able to  
19:49:20 23 distribute its gas. So pipelines, as I highlighted

19:49:25 1 earlier, a critical part of moving gas within the  
19:49:29 2 pipeline. So without the compressor station, the  
19:49:31 3 pipeline cannot move its gas. It's as simple as  
19:49:34 4 that.

19:49:36 5 **MR. MEHOLICK:** Well, we're still getting gas  
19:49:37 6 now. What's -- the impact is obviously the flow,  
19:49:40 7 I'm assuming. With the compressor station you'll  
19:49:43 8 move more gas, but you're moving gas now through  
19:49:46 9 that pipeline.

19:49:47 10 **MR. WALTERS:** We're moving gas -- again, we  
19:49:51 11 have a new pipeline coming, Northern Access 2016.  
19:49:55 12 There's a new pipeline coming from Pennsylvania to  
19:49:59 13 Porterville compressor station. That will bring  
19:50:02 14 new volumes to Western New York. This project is  
19:50:05 15 part of Northern Access 2016. This project is  
19:50:09 16 necessary to move that gas. Simple as that.

19:50:16 17 (Comments from members of the public.)

19:50:16 18 **MR. BUECHLER:** You'll have an opportunity to  
19:50:17 19 speak, so please, let's let the applicant speak at  
19:50:22 20 this point.

19:50:22 21 So it's really a question of providing  
19:50:25 22 adequate volume in the future? Is that what you're  
19:50:29 23 saying?



19:50:29 1           **MR. WALTERS:** I'm saying that this pipeline  
19:50:31 2 is necessary to distribute gas coming up.

19:50:35 3           **MR. MEHOLICK:** From this new pipeline.

19:50:37 4           **MR. WALTERS:** From this new pipeline.

19:50:43 5           **MR. WELKA:** So if it's not built, it would  
19:50:46 6 be backed up somewhere? It would be bottle-necked  
19:50:47 7 somewhere? It would end somewhere obviously.

19:50:51 8           **MR. WALTERS:** I'm going to suggest -- we  
19:50:55 9 provided you the FERC certificate of necessity. It  
19:50:59 10 is tab C of the April 12th submittal. A lot of the  
19:51:04 11 questions you're asking right now I think are  
19:51:06 12 answered by that document, and so I would simply  
19:51:08 13 ask you to review that, and then, perhaps next  
19:51:11 14 month, if you have more questions, we can run  
19:51:13 15 through them. But a lot of what you're asking I  
19:51:17 16 think is well covered in that document and  
19:51:20 17 explained. But, again, if you have additional  
19:51:22 18 questions, let's talk about it.

19:51:24 19           So perhaps I can just suggest that as a path  
19:51:27 20 forward.

19:51:29 21           **MR. WELKA:** That's fair.

19:51:30 22           **MR. WALTERS:** Great.

19:51:33 23           **MR. BUECHLER:** Any questions? I think we're

19:51:38 1 good.

19:51:38 2 **MR. WALTERS:** Thank you. I appreciate the  
19:51:40 3 opportunity.

19:51:48 4 **MR. BUECHLER:** We're going to move on to the  
19:51:50 5 comments portion of our hearing tonight. We'll  
19:51:52 6 take it in the order of the sign-in sheets. Again,  
19:51:56 7 we have 16 people signed up. Before we start, is  
19:52:00 8 there anybody who came in late that didn't get a  
19:52:03 9 chance to sign up? Why don't you come on down and  
19:52:06 10 put your names on here.

19:53:00 11 (Discussion off the record.)

19:56:21 12 **MR. BUECHLER:** All right. First up on our  
19:56:23 13 signup sheet is Mr. Zachary Chapman.

19:56:28 14 **MR. ZACHARY CHAPMAN:** Yes. Before I get to  
19:56:29 15 my sheet that I prepared today, since we have a  
19:56:32 16 little bit more time, I have a little rebuttal to  
19:56:34 17 what I just heard.

19:56:35 18 As a resident, I grew up here. I'm 40 years  
19:56:38 19 old, went to Starpoint, and what I just heard, I  
19:56:41 20 feel my health is threatened. I do not like  
19:56:44 21 feeling that way since I built my own house here in  
19:56:47 22 the town, spent a lot of money on it, a lot of hard  
19:56:51 23 labor. I don't want to just have to put up a sign

19:56:53 1 and sell my house because I feel threatened by the  
19:56:56 2 oil industry.

19:56:56 3           You know, I looked at the scale of the map  
19:56:57 4 that you provided. You know, I pulled my house up  
19:57:00 5 on my phone. I got woods. Look a half a mile  
19:57:03 6 around your map, you got people, large residents  
19:57:06 7 surrounding that compressor station.

19:57:07 8           You know, you talk about screening. That's  
19:57:10 9 wonderful. What are you doing for screening of  
19:57:12 10 your smokestack? You opened it up for this  
19:57:15 11 hearing, so I'm going to comment on them. Lots of  
19:57:17 12 pollution coming out of these. It's not regulated  
19:57:20 13 well by FERC as FERC is a politically motivated  
19:57:24 14 institution, and it's not very valid since it has  
19:57:27 15 not denied compressor stations across the country.  
19:57:27 16 Look at Minisink, New York.

19:57:31 17           You want an example of it? Hey, you want  
19:57:33 18 nosebleeds? You want headaches? You want nausea?  
19:57:36 19 I guess we'll sign up with you then for that. I  
19:57:38 20 don't need it. That's not an essential service.  
19:57:40 21 This meeting really should be about the essential  
19:57:43 22 services.

19:57:44 23           And, you know, you talk about end users. I

19:57:47 1 don't know where this documentation is coming from  
19:57:49 2 that you're supplying anyone in this area or  
19:57:52 3 Western New York area with natural gas. As far as  
19:57:55 4 I can tell, and the scuttlebutt is and the  
19:57:59 5 documentation is, you're shipping it right off of  
19:58:01 6 Canada, ship it oversees internationally. So that  
19:58:05 7 doesn't have to do with us. So I think that you  
19:58:06 8 really need to relook your priorities and look out  
19:58:09 9 for the residents of this town and not for some  
19:58:11 10 large corporation.

19:58:13 11 So getting to what's really important, it's  
19:58:15 12 an essential service, right? What's the  
19:58:17 13 definition? Well, as defined by multiple sources,  
19:58:20 14 and I'm on the sheet now, just so you guys know, by  
19:58:23 15 public needs such as water, gas, and electricity  
19:58:26 16 that are often supplied to people's houses.

19:58:29 17 Now, that would be local, at least in the  
19:58:31 18 local Western New York area. Town Code refers to  
19:58:34 19 and defines essential service as keeping in line  
19:58:37 20 with the state code standards defined as the  
19:58:40 21 erection, construction, alteration, maintenance by  
19:58:43 22 public utilities, municipal government agencies of  
19:58:46 23 gas, water, sewage, communication systems, and

19:58:49 1 facilities. Railroad track facilities and bus  
19:58:52 2 shelters would be considered an essential service.

19:58:55 3 Issue at heart of the matter: National Fuel  
19:58:57 4 Gas or Empire Pipeline, Incorporated, is not a PSC  
19:59:01 5 or publicly regulated industry. They are regulated  
19:59:04 6 by FERC. You're either one or the other. You are  
19:59:06 7 not both. FERC is not publicly regulated, which  
19:59:09 8 leads us to newly submitted Exhibit C by Empire.  
19:59:14 9 Thank you for the two-day notice, by the way.

19:59:16 10 Consol Edison and Hoffman is not comparable.  
19:59:19 11 It's a PSC, and it relates to servicing people in  
19:59:22 12 close proximity minimally by transmission lines. A  
19:59:26 13 public necessity. We have gas lines in this town.  
19:59:29 14 This is transmission to another country. Gas  
19:59:32 15 services, no one directly or indirectly in any  
19:59:35 16 means locally is going to get this.

19:59:38 17 It also provides no savings to Pendleton  
19:59:40 18 residents. No hardship, I don't have a hardship.  
19:59:44 19 My gas comes to my home fine. Homeowners will  
19:59:45 20 incur none of this. So we should deny this.

19:59:49 21 It should be noted that there are huge globs  
19:59:52 22 of fracked dirty unpurified natural gas in the  
19:59:55 23 east, and, as such, in this case Canada will ship

19:59:57 1 our country's gas overseas via the St. Lawrence  
20:00:01 2 Seaway.

20:00:01 3           How is servicing other countries an  
20:00:03 4 essential service? It's not. The court cases say  
20:00:06 5 there is a need for utilities. A ZBA can't deny  
20:00:10 6 it. Rosenberg looks at three areas to see if it's  
20:00:13 7 a public utility. Empire's far-reaching  
20:00:16 8 manipulation that satisfies Rosenberg's criteria is  
20:00:19 9 false. They are regulated by NGA or under FERC.  
20:00:22 10 Remove them from -- this removes them from PSC.

20:00:26 11           In addition, there is no need in the area  
20:00:28 12 now or in the future for their compressor station.  
20:00:30 13 In both cases C and D, Empire hinges their argument  
20:00:34 14 on being a need for a service in close proximity to  
20:00:37 15 U.S. locations.

20:00:38 16           None of these services stated in the two  
20:00:40 17 cases are relating to harmful toxin byproducts from  
20:00:45 18 burning frack gas for a compressor station to its  
20:00:46 19 local residents which such infrastructures were  
20:00:50 20 built. Empire's plan will release toxins to  
20:00:53 21 residents, not only the particulates, but noise and  
20:00:57 22 vibration. That's not an essential service.

20:00:59 23           Exhibit E is outrageous, noticing through

20:01:02 1 the documentation for a need for local  
20:01:03 2 infrastructure to service the northeast when the  
20:01:07 3 project is concentrated on shipping our resources  
20:01:09 4 overseas and has no impact on serving our local  
20:01:12 5 lines or lowering our prices.

20:01:14 6 In the end, it's not a public entity. It  
20:01:16 7 does not serve any need of our residents,  
20:01:18 8 homeowners, or landowner in current area. The  
20:01:21 9 original interpretation by the building inspector  
20:01:23 10 was spot on. Empire's application rejected  
20:01:26 11 based -- rejected based on being not an essential  
20:01:29 12 service. ZBA should uphold the building department  
20:01:32 13 and deny the application. It's not an essential  
20:01:34 14 service. Thank you.

20:01:36 15 **MR. BUECHLER:** Thank you. Next, Larry  
20:01:44 16 Chapman.

20:01:50 17 **MR. LARRY CHAPMAN:** At your discretion to  
20:01:54 18 the chairman, I would like to request that my time  
20:01:58 19 be shifted temporarily over to Gary Abraham so as  
20:02:04 20 to facilitate his ability to speak here tonight.

20:02:07 21 **MR. BUECHLER:** We'll give Mr. Abraham enough  
20:02:10 22 time to speak if you want to speak.

20:02:13 23 **MR. LARRY CHAPMAN:** But I'd like to allow

20:02:15 1 him to take my spot temporarily, so I'll switch  
20:02:18 2 with him, if it's all right with --

20:02:18 3 **MR. BUECHLER:** Okay.

20:02:19 4 **MR. LARRY CHAPMAN:** Is that okay? Thank  
20:02:25 5 you.

20:02:25 6 **MR. BUECHLER:** Mr. Abraham is number 8 on  
20:02:30 7 the list.

20:02:30 8 **MR. ABRAHAM:** Gary Abraham. I'm here  
20:02:32 9 representing the Town Board of the Town of  
20:02:34 10 Pendleton.

20:02:38 11 I think Mr. Walters correctly stated the  
20:02:42 12 standards. He's asking for a variance. He wants  
20:02:44 13 to overcome the self-created hardship which exists,  
20:02:48 14 because when they brought their proposal, the town  
20:02:52 15 restrictions and the zoning code were already in  
20:02:55 16 place. When that happens, you're deemed to have  
20:02:58 17 created your own hardship. He wants you to apply a  
20:03:02 18 relaxed standard because he's a public utility, so  
20:03:05 19 that takes us right to the issue of whether this  
20:03:12 20 project is a public utility.

20:03:15 21 First I want to emphasize that the Zoning  
20:03:19 22 Board of Appeals has a very limited job here, to  
20:03:24 23 determine whether the town building inspector



20:03:26 1 correctly interpreted the zoning restrictions that  
20:03:26 2 apply in the town's light industrial district where  
20:03:29 3 Empire wants to build a compressor station.  
20:03:32 4 Whether the Federal Natural Gas Act preempts town  
20:03:36 5 zoning rules is now before this Board. Empire and  
20:03:39 6 National Fuel have sued the town in Federal  
20:03:42 7 District Court in Buffalo for a decision on that  
20:03:43 8 question. The town has answered the complaint, and  
20:03:46 9 we await a decision.

20:03:47 10           The ZBA shouldn't be distracted by Empire's  
20:03:51 11 preemption argument, nor should you be distracted  
20:03:55 12 by a discussion of potential adverse impacts of the  
20:03:57 13 project. Those were reviewed by FERC and by the  
20:04:00 14 Planning Board.

20:04:01 15           Did the town building inspector and the town  
20:04:06 16 building department correctly conclude that a large  
20:04:08 17 compressor station is not allowed on Killian Road.  
20:04:11 18 That is the principal question before you, and  
20:04:14 19 that's the question on which I want to comment.

20:04:17 20           It is not correct, as Empire asserts, that,  
20:04:20 21 quote, in the denial of a building permit for the  
20:04:24 22 facility, the building inspector has found that the  
20:04:27 23 facility is not an essential service because it

20:04:30 1 does not service end users within the town,  
20:04:34 2 unquote.

20:04:35 3 Empire makes that assertion in its May 23  
20:04:38 4 supplement at page 3. It makes the same argument  
20:04:42 5 in its April 12th initial application at page 25.

20:04:47 6 Nowhere in the denial letter by the building  
20:04:49 7 inspector can such a position be found. Instead,  
20:04:53 8 the building inspector found that, quote, the  
20:04:56 9 project's purpose is to deliver natural gas to  
20:04:59 10 markets in the northeastern United States and  
20:05:02 11 Canada, unquote.

20:05:04 12 That -- quote, that does not demonstrate the  
20:05:07 13 company as a public utility, unquote, and, quote,  
20:05:11 14 National Fuel and its affiliates do not include any  
20:05:14 15 distribution company -- companies. That is, the  
20:05:16 16 company or its affiliates do not distribute gas to  
20:05:20 17 end users, unquote.

20:05:22 18 There's no reference in there to end users  
20:05:24 19 in the town. Does it distribute gas to end users,  
20:05:29 20 period. The building inspector found that there  
20:05:32 21 was no demonstration that it does.

20:05:35 22 The building inspector nowhere makes  
20:05:37 23 reference to service to end users within the town.

20:05:40 1 The building inspector did not consider that  
20:05:42 2 question, much less impose that as a standard  
20:05:47 3 Empire must meet. The company has fabricated this  
20:05:50 4 position and wrongly attributed it to the town's  
20:05:53 5 building inspector.

20:05:54 6 Accordingly, the company's complaint that  
20:05:57 7 it's being made to show that the compressor station  
20:05:59 8 serves end users in the town has no basis. Nobody  
20:06:02 9 ever required that.

20:06:04 10 The town finds nothing to disagree with in  
20:06:08 11 Empire's statement of the standard it must meet to  
20:06:11 12 qualify for a building permit in the light  
20:06:13 13 industrial district. Empire states, and I quote,  
20:06:16 14 under the Town Code, an essential service has two  
20:06:20 15 parts. First, it must include the erection,  
20:06:23 16 construction, alteration, or maintenance of gas,  
20:06:26 17 electrical, steam, water, sewage, communication  
20:06:29 18 systems, and facilities.

20:06:31 19 Second, the entity involved must be a public  
20:06:35 20 utility, municipality, or other governmental  
20:06:38 21 agency.

20:06:38 22 Empire is obviously not a municipality or  
20:06:42 23 other governmental agency, and the building

20:06:44 1 inspector found that Empire is not a public  
20:06:47 2 utility. The building inspector correctly stated  
20:06:49 3 the local law consistent with the statement from  
20:06:52 4 Empire I just quoted. Quote, this is from the  
20:06:55 5 building inspector, specifically Section 247-4 of  
20:07:00 6 the code allows a special use -- allows as a  
20:07:03 7 special use essential services, including gas, da,  
20:07:07 8 da, da, da, constructed by public utilities, citing  
20:07:12 9 Town Code 247-4.

20:07:14 10 There is no need to consider more. The  
20:07:20 11 ZBA's job is to determine no more than whether the  
20:07:22 12 building inspector correctly interpreted the local  
20:07:26 13 law.

20:07:26 14 Section 247-4 of the zoning code also  
20:07:30 15 requires that Empire provide to the building  
20:07:31 16 inspector a demonstration that it is a public  
20:07:34 17 utility. There's no ambiguity in the word  
20:07:38 18 demonstration.

20:07:40 19 We asked Empire and National Fuel to provide  
20:07:43 20 that demonstration several times, in the FERC  
20:07:47 21 proceeding, and the building inspector asked. It  
20:07:52 22 never provided the demonstration. The building  
20:07:55 23 inspector had no discretion but to deny a building

20:07:59 1 permit because they didn't comply with the local  
20:08:02 2 law.

20:08:04 3           They can't now provide such a demonstration,  
20:08:07 4 having squandered their chance to do so in their  
20:08:10 5 application for a building permit. The company's  
20:08:12 6 attempt to provide legal case law to support its  
20:08:15 7 case should be disregarded. It's a very simple  
20:08:20 8 issue. Did you demonstrate that you are a public  
20:08:23 9 utility or did you not? We asked. We asked. They  
20:08:27 10 didn't provide any demonstration.

20:08:30 11           Even if the ZBA wishes to consider the  
20:08:32 12 company's legal case, there are good reasons to  
20:08:35 13 reject it. The cases the company cites are not  
20:08:38 14 helpful. None of them involve interstate pipeline  
20:08:41 15 projects meant to transport natural gas.

20:08:43 16           Remember, the building inspector correctly  
20:08:45 17 noted that distribution pipelines provide essential  
20:08:50 18 services and are typically operated by public  
20:08:53 19 utilities, but Empire operates a gas transportation  
20:08:57 20 pipeline. It may provide gas to distribution  
20:09:01 21 pipelines, but that does not make Empire a  
20:09:04 22 distributor of gas or a public utility.

20:09:10 23           Public utilities in New York are governed by

20:09:13 1 New York Public Service Commission. Transportation  
20:09:16 2 pipelines providing natural gas for resale in  
20:09:17 3 interstate markets are governed by FERC.

20:09:20 4 This project is clearly regulated by FERC.  
20:09:23 5 It is not regulated by the PSC. That clarifies  
20:09:26 6 without any doubt that the compressor station is  
20:09:29 7 not a public utility.

20:09:31 8 Empire's assertion that it is a public  
20:09:34 9 utility and that it provides essential services  
20:09:36 10 which must be direct gas service to end users  
20:09:40 11 somewhere on the planet is no more than a bald  
20:09:44 12 assertion lacking any demonstration.

20:09:47 13 **MR. BUECHLER:** Mr. Abraham, we were at seven  
20:09:50 14 minutes at this point. We're pushing a rough  
20:09:52 15 estimate of five.

20:09:53 16 **MR. ABRAHAM:** I'm four sentences away.

20:09:55 17 **MR. BUECHLER:** Okay.

20:09:56 18 **MR. ABRAHAM:** Sorry. By its own account,  
20:10:00 19 the compressor -- by Empire's own account, the  
20:10:03 20 compressor station is designed to provide gas to  
20:10:05 21 markets somewhere, whether in Canada or in  
20:10:08 22 New York. It has not shown what will happen to any  
20:10:11 23 of the gas.

20:10:13 1 One time it responded to our request that it  
20:10:18 2 provide the demonstration by saying that some  
20:10:22 3 molecules of gas may find their way into  
20:10:25 4 distribution lines, but that doesn't make them a  
20:10:29 5 distributor of natural gas.

20:10:32 6 If it were built, the compressor station  
20:10:34 7 might provide some gas to NYSEG, but NYSEG is the  
20:10:37 8 distributor. NYSEG can get gas for its customers  
20:10:40 9 without this compressor station.

20:10:42 10 NYSEG is a public utility. Empire is not.  
20:10:45 11 NYSEG provides essential services. Empire does  
20:10:48 12 not. This is what the building inspector  
20:10:50 13 concluded, and we urge you to uphold the building  
20:10:54 14 inspector's conclusion. Thank you.

20:11:04 15 **MR. BUECHLER:** Thank you. Mr. Chapman, did  
20:11:06 16 you want to --

20:11:10 17 **MR. LARRY CHAPMAN:** I can wait.

20:11:11 18 **MR. BUECHLER:** Then next up is number 3, Mr.  
20:11:16 19 Broughton.

20:11:16 20 **MR. BROUGHTON:** My name's Neil Broughton.

20:11:25 21 My wife and I moved into Pendleton from Niagara  
20:11:29 22 Falls in 1980, so we've been here almost 37 years.

20:11:35 23 The reason we moved to Pendleton was because

20:11:41 1 in Niagara Falls we were experiencing on a regular  
20:11:43 2 basis sirens that would go off when Hooker,  
20:11:47 3 Occidental, and the other chemical plants along the  
20:11:51 4 river had leaks. We didn't really need the sirens,  
20:11:56 5 because we could smell the chlorine gas and would  
20:12:02 6 have to rush inside, get off our front porch or our  
20:12:07 7 yard. We were worried about how it might affect  
20:12:10 8 our garden, and the fact that gas was still getting  
20:12:13 9 into our home even though we were trying to protect  
20:12:16 10 ourselves within our home.

20:12:17 11 So we came to Pendleton because we assumed  
20:12:21 12 that there wasn't that kind of an issue here, and  
20:12:25 13 in following the Zoning Boards over the years,  
20:12:27 14 they've done a great job at preventing that kind of  
20:12:33 15 emissions from entering our air that we have been  
20:12:37 16 breathing cleanly, I assume, for 37 years now.

20:12:42 17 One difference that would occur from the  
20:12:45 18 emissions from this compressor station is that we  
20:12:49 19 wouldn't have a siren. We wouldn't have any  
20:12:52 20 ability to detect any of the harmful emissions like  
20:12:57 21 benzene and butane and whatever the other emissions  
20:13:00 22 are that scientists can elaborate on. So we would  
20:13:04 23 be constantly, when we're outside, under the fear



20:13:07 1 that this is still occurring and the danger is  
20:13:12 2 still there.

20:13:13 3           So it's kind of a psychological care that we  
20:13:18 4 would experience that has not been lessened at all  
20:13:23 5 by any of the claims by National Fuel Gas or -- or  
20:13:27 6 Empire or any other institution or company that  
20:13:32 7 that just doesn't occur. We, in fact, know that it  
20:13:35 8 does occur, and there's been experts that have  
20:13:38 9 testified to that at prior times.

20:13:42 10           Other than that, an emotional kind of  
20:13:46 11 appeal. I, too, questioned the essential nature of  
20:13:51 12 the service that they're providing. What I  
20:13:54 13 consider essential, to me and to anybody I know, is  
20:13:59 14 being able to breathe clean air and not having it  
20:14:02 15 affect my physical health, my property value, my  
20:14:09 16 dogs, my kids, my grandkids.

20:14:11 17           So I would urge the Board to continue its  
20:14:16 18 fight, and thank you very much for doing so in the  
20:14:18 19 past. That's why we've stayed here for 37 years.  
20:14:24 20 Don't want to have to leave.

20:14:30 21           **MR. BUECHLER:** Annmarie Reeb.

20:14:33 22           **MS. REEB:** Hi. Annmarie Reeb, and I'm a  
20:14:38 23 resident of the Town of Pendleton.

20:14:40 1 First of all, I'd like to provide to the  
20:14:43 2 Zoning Board petitions signed by residents of this  
20:14:47 3 town. We, the residents of the Town of Pendleton,  
20:14:50 4 New York, fully support our Town of Pendleton's  
20:14:53 5 building inspector's decision to deny a building  
20:14:55 6 permit for the proposed gas compressor. We would  
20:14:57 7 like to provide that to you first. Thank you.

20:15:04 8 Okay. To the Pendleton Zoning Board of  
20:15:07 9 Appeals, first of all, thank you for allowing us to  
20:15:11 10 speak in public here regarding the Empire Pipeline,  
20:15:11 11 Incorporated, zoning appeal. I respectfully  
20:15:17 12 request that this letter be submitted to the  
20:15:18 13 official record of the Zoning Board of Appeals  
20:15:20 14 meeting on this matter and the comments contained  
20:15:24 15 within considered seriously.

20:15:26 16 Empire Pipeline, Incorporated, and its  
20:15:28 17 parent company, National Fuel, have admitted that  
20:15:31 18 72 percent of the new gas capacity created by the  
20:15:33 19 Northern Access 2016 project will be travelling  
20:15:37 20 through the proposed Pendleton Compressor Station  
20:15:40 21 and Wheatfield Dehydration Facility and will be  
20:15:44 22 going directly to market via the Dawn hub in  
20:15:49 23 Canada. The other 28 percent new capacity will

20:15:51 1 presumably be redirected through the revamped  
20:15:53 2 Porterville Compressor Station in Elma to other  
20:15:56 3 destinations.

20:15:58 4           With that being the case, Empire Pipeline,  
20:16:00 5 Incorporated, is wrong to keep citing and hiding  
20:16:03 6 behind both the Natural Gas Act and the authority  
20:16:05 7 granted by Congress to the Federal Energy  
20:16:09 8 Regulatory Commission, FERC, and all of their  
20:16:12 9 letters and filings to the Town of Pendleton  
20:16:14 10 relative to the proposed compressor station. When  
20:16:17 11 last I checked, Canada was not part of the United  
20:16:20 12 States.

20:16:20 13           Empire Pipeline, Incorporated, in its own  
20:16:23 14 pleadings to the U.S. District Court on March 13,  
20:16:26 15 2017, stated it is well settled that the Natural  
20:16:31 16 Gas Act preempts a municipality from using local  
20:16:36 17 law to directly regulate the construction and  
20:16:38 18 operation of natural gas facilities for the  
20:16:42 19 transportation of natural gas in interstate  
20:16:44 20 commerce.

20:16:44 21           The Federal Energy Regulatory Commission on  
20:16:47 22 their own website state they regulate the  
20:16:49 23 interstate transmission of electricity, natural

20:16:51 1 gas, and oil. I have a copy of it right here,  
20:16:56 2 which I will be submitting with my statements, to  
20:17:01 3 show the members of the Zoning Board.

20:17:03 4 The proposed Pendleton Compressor Station is  
20:17:05 5 not needed for interstate commerce. It is only  
20:17:07 6 needed to pressurize the gas so that it can travel  
20:17:10 7 through Empire's high-pressure pipeline system  
20:17:13 8 under the Niagara River, under Grand Island, and on  
20:17:17 9 to the Dawn hub in Sarnia, Canada, over 200 miles  
20:17:21 10 away.

20:17:22 11 Therefore, as the pipeline -- therefore, as  
20:17:25 12 the pipeline that will be travelling through the  
20:17:27 13 proposed Pendleton Compressor Station will be going  
20:17:29 14 to Canada, wouldn't that make it an international  
20:17:32 15 pipeline being used for international commerce?  
20:17:36 16 Therefore, why can't a municipality such as the  
20:17:39 17 Town of Pendleton regulate the construction of this  
20:17:42 18 facility? FERC can't. Don't we have a right under  
20:17:46 19 the home rule? Aren't we the ones living in the  
20:17:50 20 town and paying the taxes?

20:17:52 21 I would like the Zoning Board of Appeals to  
20:17:56 22 look at the other industries in the Town of  
20:17:58 23 Pendleton. We don't have many, and there is not

20:18:00 1 one similar industrial structure or facility in the  
20:18:02 2 entire town.

20:18:03 3 No matter how Empire Pipeline tries to  
20:18:05 4 disguise the proposed compressor station to look  
20:18:08 5 like farm buildings with 70-foot green silos, they  
20:18:12 6 cannot hide the fact that this type of facility  
20:18:14 7 will pollute the entire Town of Pendleton.

20:18:17 8 The proposed Pendleton Compressor Station  
20:18:21 9 will be a nuisance to the surrounding neighborhood  
20:18:22 10 with the perpetual noise and vibrations it  
20:18:25 11 generates, and it will be a danger to the health  
20:18:27 12 and safety of all the residents of the Town of  
20:18:29 13 Pendleton with the emissions it throws into the  
20:18:32 14 surrounding air.

20:18:33 15 And just so you know, when they -- which is  
20:18:35 16 not on here, they're going to bury some of the  
20:18:38 17 pipeline. What about the vibrations from those  
20:18:40 18 compressors? They're talking about pipeline.  
20:18:43 19 Those compressors are at least 11,000 horsepower.

20:18:48 20 By any reasonable assessment, the compressor  
20:18:52 21 station would be heavy industrial land use, not  
20:18:55 22 allowed in the town's light industrial zoning  
20:18:58 23 district. You should, therefore, affirm the

20:19:00 1 building department's determination and deny Empire  
20:19:04 2 Pipeline and National Fuel, or whatever they are  
20:19:06 3 calling themselves today, a building permit.

20:19:09 4 I would like to thank you on that, but I  
20:19:11 5 would also like to rebut National Fuel if I have a  
20:19:13 6 moment.

20:19:13 7 **MR. BUECHLER:** You have some time.

20:19:15 8 **MS. REEB:** Do I have some time?

20:19:17 9 First of all, there was a question asked  
20:19:18 10 about the gas pressure on the lines, and that is  
20:19:22 11 determined based on the gas going through. I'd  
20:19:24 12 also like to point out it's also based on  
20:19:26 13 classification codes. That is not determined by  
20:19:29 14 FERC. That is determined by FISMA, and FISMA, they  
20:19:33 15 have to still go through them for a permit if  
20:19:36 16 they're going to do anything between class codes 1,  
20:19:41 17 2, 3, and 4.

20:19:42 18 So in the submittal to FERC, they did an  
20:19:47 19 office study or computer study of our area in the  
20:19:50 20 classification codes and promised a full study of  
20:19:54 21 which they never provided to FERC, of which I  
20:19:57 22 requested, of which I also brought up to the DEC,  
20:20:00 23 because that is important to us as far as how high

20:20:04 1 pressured those lines are going through our town  
20:20:06 2 and past our homes.

20:20:08 3           So they have not provided that, nor did FERC  
20:20:11 4 require them to provide it. So when they said  
20:20:13 5 FERC, you know, confirmed all this stuff, well, it  
20:20:16 6 was only based on what they wanted to know and not  
20:20:18 7 based on the questions we asked and we wanted  
20:20:20 8 answers to, because it's us that is living here.  
20:20:23 9 They don't live here. They don't live here. We  
20:20:26 10 live here. We want our answers. Thank you.

20:20:38 11           **MR. BUECHLER:** Thank you. Sara Siracuse.

20:20:51 12           **MS. SIRACUSE:** Hi. Sara Siracuse, 6988  
20:20:54 13 Monroe Street, Pendleton. I'll give my address. I  
20:20:57 14 don't mind.

20:20:58 15           As a resident of the town, I am here tonight  
20:21:00 16 to show my support for the Code Enforcement  
20:21:03 17 Officer's decision to deny Empire Pipeline, Inc., a  
20:21:06 18 building permit and also to request that you deny  
20:21:08 19 them a use variance.

20:21:10 20           I am in agreement with the building  
20:21:11 21 inspector that this type of facility is not a  
20:21:14 22 permitted use by right within the town's light  
20:21:17 23 industrial district, and I further assert that

20:21:19 1 based on the town's purposes, principles, and  
20:21:22 2 practices, there is no ordinance or district zone  
20:21:25 3 that will allow for this type of intrusive facility  
20:21:28 4 or industry.

20:21:30 5 I would like to specifically address the  
20:21:33 6 term public utility, and I have brought for you  
20:21:36 7 tonight a copy of National Fuel Company's annual  
20:21:39 8 10K filing with the U.S. Securities and Exchange  
20:21:43 9 Commission.

20:21:43 10 It is my belief that this document fully  
20:21:47 11 supports the position that Empire as well as its  
20:21:50 12 affiliates, National Fuel Supply, do not meet the  
20:21:55 13 criteria of a public utility. This would negate  
20:21:58 14 any attempt on their part to obtain a special use  
20:22:00 15 status under the title of essential services per  
20:22:04 16 our code and its intent.

20:22:05 17 This document shows that the organization of  
20:22:08 18 said company, including all the subsidiaries, are  
20:22:11 19 broken down into five distinct and specific  
20:22:14 20 business segments for the purposes of not only  
20:22:17 21 reporting, but in order to comply with the  
20:22:20 22 requirements of the various regulating agencies  
20:22:24 23 each must comply to.



20:22:26 1           As you will see, I have highlighted many  
20:22:28 2 sections and phrases for your review and  
20:22:31 3 consideration, but due to time constraints, I will  
20:22:34 4 only be able to briefly touch on a couple of them.  
20:22:37 5 So I respectfully request that you take the time to  
20:22:39 6 review this entire submission before rendering any  
20:22:42 7 decision.

20:22:43 8           On page 6 of this document, you will see the  
20:22:46 9 only subsidiary described and listed within the  
20:22:49 10 utility segment of this holding company is National  
20:22:53 11 Fuel Gas Distribution. Both Empire and Supply are  
20:22:55 12 placed together under the listing of pipeline and  
20:22:58 13 storage, meaning that if two entities perform  
20:23:02 14 similar functions, they will be listed together.

20:23:04 15           I believe this separation of utility versus  
20:23:09 16 pipeline and storage not only demonstrates that  
20:23:11 17 they are distinctively different types of  
20:23:13 18 businesses, but that they actually perform separate  
20:23:16 19 and independent functions for said company.

20:23:19 20           To further support my assertion on page 7 of  
20:23:21 21 this document, under rates and regulations they  
20:23:25 22 make a clear distinction that the utility segment  
20:23:28 23 is governed by the Public Service Commission, and

20:23:30 1 the pipeline and storage segment is governed by  
20:23:33 2 FERC.

20:23:33 3           On pages 8 through 11 you will see  
20:23:36 4 statements in regards to how the utility segment  
20:23:39 5 has to contract with the pipeline and storage  
20:23:41 6 segment in order to purchase gas from suppliers,  
20:23:44 7 where the pipeline and storage segment simply  
20:23:47 8 transports and stores the gas that is already owned  
20:23:50 9 by their customers.

20:23:51 10           Seasonality is addressed, differentiating  
20:23:55 11 that only the utility segment is given the right to  
20:23:59 12 have a weather normalization cause which helps  
20:24:02 13 recover their normal operating costs which are  
20:24:06 14 dependent on volume used. The pipeline and storage  
20:24:09 15 segments do not have the same right, nor do they  
20:24:12 16 need it, because their costs are not dependent on  
20:24:15 17 the amount of volume used.

20:24:17 18           Page 15 contains information regarding the  
20:24:19 19 fact that only Empire and Supply are subject to  
20:24:24 20 Canadian regulations, again, differentiating them  
20:24:28 21 specifically from the utility segment.

20:24:29 22           Their financial data and accounting for all  
20:24:32 23 their segments will also clearly show you the

20:24:35 1 distinctions and differentiations and why they have  
20:24:38 2 to be broken down that way.

20:24:39 3 I believe this document alone supports the  
20:24:42 4 decision that Empire is not a public utility, and  
20:24:47 5 it's certainly not per our definition and its  
20:24:50 6 intent.

20:24:50 7 I also believe that this document proves  
20:24:53 8 that the only business segment found under National  
20:24:57 9 Fuel Gas Company that could qualify for a public  
20:25:00 10 utility status is National Fuel Distribution. Any  
20:25:03 11 decision stating otherwise or that grants one  
20:25:05 12 segment the authoritative privileges of another  
20:25:08 13 segment or its title would be completely  
20:25:10 14 inappropriate.

20:25:11 15 To conclude this point, I also bring to your  
20:25:14 16 attention on page 3 of their actual application  
20:25:17 17 under project details which contains various  
20:25:20 18 statements in regards to Empire transporting gas to  
20:25:24 19 the local utility companies. I believe in their  
20:25:28 20 own words they are proving the distinction between  
20:25:30 21 their pipeline company and the utility companies  
20:25:33 22 they serve.

20:25:35 23 In regards to their request for a use

20:25:37 1 variance, I believe I need not say much, for I have  
20:25:41 2 full faith in this Board's knowledge and your  
20:25:44 3 understanding of the duties set before you, and I  
20:25:46 4 believe that based on your practice of integrity  
20:25:49 5 and thoroughness, you will come to agree that  
20:25:52 6 granting such a variance would be in complete  
20:25:54 7 dereliction with this town's essential character,  
20:25:58 8 its ordinances, and the general welfare of its  
20:26:01 9 citizens.

20:26:01 10 I will leave you with this statement by  
20:26:03 11 James Coon: Great care must be taken to ensure  
20:26:06 12 that the purpose and intent of an ordinance or  
20:26:09 13 local law is carried out lest too many changes  
20:26:12 14 without proper foundation destroy zoning itself.

20:26:15 15 Thank you.

20:26:35 16 **MR. BUECHLER:** Barb Ciepiola.

20:26:46 17 **MS. CIEPIOLA:** Hi. I'm Barbara Ciepiola,  
20:26:49 18 and I'm a Pendleton resident for almost 27 years.  
20:26:51 19 I support the Town of Pendleton building  
20:26:56 20 inspector's denial of a building permit for the  
20:26:58 21 proposed 22,214-horsepower compressor station and  
20:27:03 22 related equipment located at 4281 Killian Road in a  
20:27:08 23 light industrial district in the Town of Pendleton,

20:27:10 1 New York.

20:27:11 2 Light industrial use encompasses light  
20:27:16 3 manufacturing businesses that do not cause, quote,  
20:27:20 4 noise, air, or water disturbances or pollution. I  
20:27:25 5 also feel that no use variance should be granted,  
20:27:28 6 because I do not believe that zoning regulations  
20:27:31 7 and restrictions have caused unnecessary hardships  
20:27:34 8 to National Fuel Empire Pipeline as explained here.  
20:27:38 9 I also have the New York zoning laws specifically  
20:27:42 10 talking about variances.

20:27:44 11 Number 1, one of these New York State  
20:27:46 12 variances is that the requested use variance will  
20:27:49 13 not alter the essential character of the  
20:27:52 14 neighborhood. The Town of Pendleton is mostly  
20:27:54 15 farmland, trees, and houses, homes located mostly  
20:27:58 16 near the proposed compressor station site.

20:28:02 17 Businesses include our school, churches, a  
20:28:04 18 New York State regulatory station, landscaping,  
20:28:08 19 topsoil, auto, motorcycle sales, a golf course,  
20:28:12 20 pole barns, restaurants, a gas station, daycare,  
20:28:17 21 two ice cream places, a hotel, the gun club,  
20:28:21 22 et cetera.

20:28:22 23 The only facility that emits pollution is

20:28:25 1 the mercaptan facility on Aiken Road. At least  
20:28:29 2 that is not going to be visible from the road,  
20:28:31 3 unlike the Killian compressor station.

20:28:34 4 The homeowners, 115 children at daycare, 350  
20:28:38 5 golfers at Tan Tara, school children would all be  
20:28:42 6 affected by the gases emitted by the compressor  
20:28:45 7 station.

20:28:46 8 It is also extreme danger to us since the  
20:28:49 9 gun club has a sign .3 miles away from the site  
20:28:54 10 warning that someone or something could be shot.  
20:28:59 11 What if the compressor station pipes are  
20:29:01 12 accidentally shot? Does the town have an  
20:29:04 13 evacuation plan if that happens? Please prevent  
20:29:07 14 this level of intrusion in Pendleton and protect  
20:29:11 15 the health and safety of our community.

20:29:14 16 Number 2, use variance. The alleged  
20:29:17 17 hardship has not -- has not been self-created.  
20:29:20 18 This is definitely not true. There are numerous  
20:29:23 19 other locations that are zoned high industrial,  
20:29:26 20 like the existing compressor station on Lockport  
20:29:29 21 Junction Road that are not near a lot of homes  
20:29:32 22 within a one-mile radius and also zoned high -- you  
20:29:36 23 know, basically high industrial, heavily

20:29:39 1 industrial, okay?

20:29:40 2 National Fuel/Empire Pipeline also paid for  
20:29:44 3 the property before they were given a building  
20:29:46 4 permit, so that's not a cause for extreme use.

20:29:49 5 3, the applicant cannot realize a reasonable  
20:29:53 6 return. There are plenty of other businesses I'm  
20:29:57 7 sure that would be willing to locate to Pendleton.  
20:30:00 8 Maybe another example, like SolarCity.

20:30:02 9 4, the property's plight is due to unique  
20:30:07 10 circumstances and not to general neighborhood  
20:30:09 11 conditions. The noise, air, and water pollution  
20:30:11 12 would definitely affect all of Pendleton,  
20:30:14 13 especially since we have a lot of fog caused by  
20:30:17 14 temperature inversion and wind in our area. No  
20:30:22 15 additional people in Pendleton would be supplied by  
20:30:25 16 the natural gas. It is not a public utility for  
20:30:28 17 us.

20:30:28 18 Under the Natural Gas Act, FERC has  
20:30:32 19 exclusive jurisdiction associated with interstate  
20:30:35 20 national pipelines, including this facility. This  
20:30:39 21 is an international facility used to transmit  
20:30:41 22 natural gas to Canada.

20:30:43 23 Thank you. And I also have -- I went with

20:30:47 1 Cindy Baumann on a tour of Pendleton. This is the  
20:30:50 2 type of businesses we have in Pendleton. We have  
20:30:53 3 no heavy industrial business.

20:31:03 4 **MR. BUECHLER:** Paul Brooks.

20:31:21 5 **MR. BROOKS:** Good evening. This is  
20:31:24 6 basically -- first, let me predicate, I am a  
20:31:32 7 resident of Pendleton on Killian Road, and I've  
20:31:37 8 been there for almost 20 years. Now, I'm here  
20:31:44 9 today to express my complete cynicism regarding  
20:31:54 10 National Fuel Gas.

20:31:56 11 Now, according to a news report yesterday,  
20:32:05 12 you have an affiliation with Seneca Resources that  
20:32:11 13 does the drilling from PA over the past few years,  
20:32:22 14 and they have a total of 623 violations of the law  
20:32:32 15 regarding drilling going back to Seneca Resources  
20:32:38 16 in which National Fuel Gas has an affiliation with.

20:32:45 17 Insofar as inspecting their work, they have  
20:32:52 18 a 9 percent failure work. That means out of a  
20:32:58 19 hundred times that this company has been inspected,  
20:33:04 20 it failed at least 9 percent of the time.

20:33:08 21 So my point is, why is National Fuel Gas  
20:33:14 22 affiliated with such a company? That's crazy.  
20:33:26 23 That gives me -- National Fuel Gas no credibility



20:33:31 1 to even thinking about putting people's lives in  
20:33:35 2 danger.

20:33:38 3 Now, over the past ten years, going back to  
20:33:43 4 Seneca Resources, I keep saying that, which your  
20:33:50 5 company has an affiliation with, they have been  
20:33:54 6 fined over \$900,000 for violations. So my point  
20:34:04 7 is, I don't trust National Fuel Gas. Thank you.

20:34:16 8 **MR. BUECHLER:** Mr. Chapman.

20:34:23 9 **MR. LARRY CHAPMAN:** Thank you. I think the  
20:34:25 10 wait was well worth it, let me tell you. Okay.  
20:34:29 11 I've got copies here. I'm going to be short one,  
20:34:34 12 and I'll give that one out when I get done reading  
20:34:37 13 mine, okay?

20:34:47 14 **MR. BUECHLER:** Just a minute, Mr. Chapman.

20:34:54 15 **MR. LARRY CHAPMAN:** Sure.

20:34:55 16 **MR. BUECHLER:** We're just clarifying that --  
20:34:56 17 it's my belief you postponed your time and you're  
20:35:00 18 taking Mr. Abraham's slot is what I'm --

20:35:04 19 **MR. LARRY CHAPMAN:** Yes, right.

20:35:04 20 **MR. BUECHLER:** Okay.

20:35:04 21 **MR. LARRY CHAPMAN:** At your discretion, sir.

20:35:06 22 **MR. BUECHLER:** Continue.

20:35:08 23 **MR. LARRY CHAPMAN:** You know, I sometimes

20:35:11 1 feel that I probably should have been more involved  
20:35:14 2 in this before things had gotten this far along,  
20:35:17 3 but I would like to just put the record straight  
20:35:20 4 for you guys to be able to make a good decision on  
20:35:22 5 your own. I want you to understand something. I  
20:35:28 6 do agree completely with Mr. Abraham and his -- his  
20:35:34 7 dissertation here, and in support of that, I would  
20:35:37 8 like to give you a little something that no one  
20:35:39 9 else in this town, with the exception of Bob  
20:35:44 10 Kramer, would be able to do so, and I'm going to  
20:35:47 11 give you just one thing, and this is a time capsule  
20:35:51 12 for you guys.

20:35:55 13           You may or may not be aware of it, but I was  
20:35:58 14 one of the authors of this ordinance that you're  
20:36:02 15 looking at. If you ever wondered what was on our  
20:36:06 16 mind when we made it between Joe Boris, who was the  
20:36:10 17 chairman at that time of the Planning Board, and  
20:36:13 18 the members of my board, which unfortunately I have  
20:36:16 19 to mention all but one of them and myself are  
20:36:19 20 deceased. So I'm going to give you what I hope  
20:36:23 21 will be something that will leave a lasting  
20:36:26 22 impression on this particular issue.

20:36:30 23           And should you in the future want to ask me

20:36:32 1 while I'm still alive and I can still remember, be  
20:36:36 2 free to ask me what did transpire, if it seems to  
20:36:40 3 be important to you, all right?

20:36:41 4 All right. I would like to formally  
20:36:45 5 state -- and I'm just going to read this, and then  
20:36:48 6 I will paraphrase what I'm going to read for you.  
20:36:51 7 I would like to formally state for the record that  
20:36:55 8 as long -- as a longtime resident and a previous  
20:36:58 9 town official, that I find the challenge of the  
20:37:01 10 building inspector's rejection for a building  
20:37:04 11 permit regarding a proposed compressor station and  
20:37:08 12 related equipment located at 4281 Killian Road to  
20:37:13 13 be without merit and should result in rejection of  
20:37:17 14 their request for a variance.

20:37:21 15 As town supervisor, that with the help of  
20:37:25 16 the Town Board and the Planning Board was  
20:37:27 17 responsible for much of the existing text of the  
20:37:31 18 town zoning ordinance, I feel compelled to give an  
20:37:35 19 explanation of the intent of the wording contained  
20:37:37 20 in the ordinance.

20:37:39 21 See, that's the one part that you can't get,  
20:37:41 22 and that is, what was the intent, what was the true  
20:37:44 23 intent of our discussions, and there were many, and

20:37:47 1 they were long, to tell you the truth. This  
20:37:50 2 ordinance was a real pain in the butt, to be honest  
20:37:53 3 with you. We spent -- we spent hours and hours on  
20:37:55 4 this thing, and I thought we would never get it  
20:37:58 5 straight, and it went back and forth between the  
20:38:00 6 Planning Board and ourselves over and over again.  
20:38:03 7 The Town Board debated things. We did not always  
20:38:07 8 agree on everything.

20:38:08 9 Our overall objective, and this is straight  
20:38:11 10 from the history book here, as regards the light  
20:38:18 11 industrial zoning was to protect the public health  
20:38:20 12 and well-being by controlling any form of industry  
20:38:24 13 that could pose an environmental threat to the  
20:38:27 14 town, as the town at that time was actively  
20:38:30 15 involved in an environmental problem with hazardous  
20:38:33 16 waste disposal, like Frontier Chemical, that posed  
20:38:36 17 a major health hazard.

20:38:39 18 That I have to tell you, gentlemen, was a  
20:38:42 19 real pain in the butt as well, and part of that was  
20:38:44 20 due to the fact that our ordinance wasn't really in  
20:38:48 21 place when that business started, and we really saw  
20:38:51 22 the error of our ways and what we really needed to  
20:38:54 23 straighten out. That was a very distasteful

20:38:57 1 experience on my -- in my history here as  
20:39:01 2 supervisor. I would really not like to see anybody  
20:39:03 3 else have to repeat that experience.

20:39:05 4 We felt that we were fighting an uphill  
20:39:08 5 battle against a lot of -- a lot of indecision from  
20:39:13 6 the State and a lot of noncompliance from the  
20:39:17 7 industry itself, and nobody seemed to be willing to  
20:39:20 8 help us.

20:39:22 9 This further provided incentive to enact the  
20:39:27 10 protective wording that you see in your ordinance.  
20:39:30 11 So we had a reason for what we did and for what we  
20:39:33 12 put in there.

20:39:34 13 To insure that our ordinance would comply  
20:39:37 14 with state standards, we often used standards and  
20:39:39 15 recommendations from state guidelines, the  
20:39:40 16 limitations on rights to usage as stated, the  
20:39:43 17 ordinance to do just that. The provision for a  
20:39:50 18 possible exception in the term essential services  
20:39:53 19 was meant to satisfy the need to provide for our  
20:39:56 20 local town needs for immediate services.

20:39:59 21 Now, further, our jurisdiction of this  
20:40:04 22 matter was felt to be within our home rule rights.

20:40:06 23 Now, I feel very strongly about this

20:40:08 1 ordinance as a representation of us as a town and  
20:40:12 2 our right to legislate laws on our behalf that  
20:40:17 3 protect us.

20:40:18 4 **MR. BUECHLER:** You're at five minutes right  
20:40:20 5 now, Mr. Chapman.

20:40:21 6 **MR. LARRY CHAPMAN:** Okay. All right. Let  
20:40:22 7 me just summarize really quickly here, all right?  
20:40:25 8 The impression I had of the claim of agents of the  
20:40:28 9 National Fuel, that they represent the local  
20:40:30 10 central service does not meet with our original  
20:40:33 11 intent for this provision.

20:40:34 12 Furthermore, stated overall purpose of their  
20:40:38 13 project is to transmit gas to other markets for  
20:40:41 14 outside of our area and are not intended as a local  
20:40:43 15 supply or direct benefit, period.

20:40:46 16 If the members of this Board were to approve  
20:40:48 17 of this request, your decision could have  
20:40:51 18 far-reaching effects on our ability to enforce our  
20:40:54 19 ordinance. The building inspectors did follow the  
20:40:57 20 intent of this ordinance. The document provided by  
20:41:00 21 the pipeline representatives do not necessarily or  
20:41:04 22 directly apply, in my opinion, to our case, and as  
20:41:08 23 well I notice that Gary Abraham agrees with that as

20:41:11 1 well.

20:41:11 2 I want you guys to at least be focused on  
20:41:14 3 what's really at hand here, and it's far more than  
20:41:17 4 just making a simple decision. This represents who  
20:41:20 5 we are.

20:41:22 6 Okay. Thank you.

20:41:26 7 **MR. BUECHLER:** Thank you. Paula Hargreaves.

20:41:35 8 **MS. HARGREAVES:** Hi. My name's Paula  
20:41:45 9 Hargreaves. My husband and I, we've lived in  
20:41:49 10 Pendleton for 30 years, and we moved to Pendleton  
20:41:55 11 to get away from noise and traffic on Campbell  
20:41:58 12 Boulevard and to raise our kids in a nice, safe,  
20:42:03 13 quiet rural community like Pendleton, and for the  
20:42:08 14 last 30 years, it's been lovely, and I'd like it to  
20:42:11 15 continue.

20:42:12 16 We have the best neighbors in the world, and  
20:42:19 17 we like it the way it is. We understand we've been  
20:42:22 18 paying higher taxes in the town because we don't  
20:42:25 19 have any heavy industry. We've done that for the  
20:42:27 20 last 30 years. We're quite willing to go on with  
20:42:30 21 that. We'd sooner -- they can keep their \$10 or  
20:42:35 22 whatever my taxes will go down. I'll give you \$10  
20:42:38 23 more. Just keep them out of our town.

20:42:41 1           Anyway, I respectfully request that the  
20:42:45 2 Zoning Board of Appeals consider the comments that  
20:42:50 3 I'm putting and take it seriously. I understand  
20:42:53 4 that Empire Pipeline, Inc., is claiming that they  
20:42:56 5 fall under the town's essential services  
20:42:58 6 designation.

20:43:00 7           I would ask the Zoning Board of Appeals to  
20:43:03 8 look at page 3 of the 955 pages that Empire  
20:43:08 9 submitted to them on April the 12th, 2017. In the  
20:43:13 10 third paragraph of this page, Empire states that,  
20:43:16 11 and I'm paraphrasing, as of November the 15th -- as  
20:43:20 12 of November 2015, the natural gas supply for the  
20:43:23 13 Town of Pendleton is transported largely by Empire.

20:43:28 14           Those of us in Pendleton who get natural gas  
20:43:32 15 supplied to their homes are already receiving this  
20:43:35 16 essential service using the pipeline facilities  
20:43:38 17 that are already in place. Empire Pipeline has  
20:43:42 18 already stated that the natural gas going through  
20:43:45 19 the proposed Pendleton Compressor Station is going  
20:43:48 20 to the Dawn hub in Sarnia, Canada, which is way  
20:43:52 21 over the other end of Ontario, close to the border  
20:43:55 22 with Michigan. I looked it up.

20:43:58 23           I have here two reports which I'm going to



20:44:02 1 give to you which talk about the Dawn hub in Canada  
20:44:05 2 and how it's being swamped with natural gas from  
20:44:09 3 pipelines going to it from Ohio, Michigan, and  
20:44:13 4 Pennsylvania, and how it's having a detrimental  
20:44:17 5 effect on Canada's own natural gas industry.

20:44:20 6           The March 13th, 2017, report details a new  
20:44:24 7 Canadian agreement that is, and I quote, intended  
20:44:28 8 to send more Canadian gas to the southern Ontario  
20:44:33 9 market before competing pipelines from Pennsylvania  
20:44:36 10 are built and crowd domestic gas out of the region.

20:44:43 11           If the Canadians are already talking about  
20:44:46 12 the Dawn hub being oversupplied, how is building  
20:44:47 13 the proposed northern access pipeline and the  
20:44:50 14 planned compressor station providing an essential  
20:44:52 15 service to anyone, in Canada or to the United  
20:44:55 16 States? Canada has enough of their own natural  
20:44:59 17 gas. They have so much, in fact, that they're  
20:45:03 18 exporting natural gas themselves to countries such  
20:45:05 19 as China and India.

20:45:08 20           I remember not so long ago there were  
20:45:10 21 commercials on TV talking about how the natural gas  
20:45:13 22 from the fracking in Pennsylvania and the other  
20:45:17 23 states was going to make America energy

20:45:21 1 independent. Instead of reducing the price of the  
20:45:24 2 natural gas to consumers in the United States,  
20:45:25 3 companies like National Fuel want to export the gas  
20:45:28 4 to make even more profits for themselves. How is  
20:45:32 5 that an essential service?

20:45:34 6 On May the 23rd, 2017, Empire Pipeline  
20:45:38 7 submitted a copy of a report prepared by the U.S.  
20:45:41 8 Chamber of Commerce's Institute For 21st Century  
20:45:46 9 Energy entitled What If Pipelines Aren't Built in  
20:45:50 10 the Northeast.

20:45:52 11 Firstly, I would like to point out the U.S.  
20:45:55 12 Chamber of Commerce is a federation representing  
20:45:57 13 the interests of more than 3 million businesses, so  
20:46:01 14 obviously it is a major slant in the objectivity  
20:46:05 15 and the bias in the report.

20:46:07 16 Empire's own attorney on page 8 of his cover  
20:46:10 17 letter stated that the Chamber report outlines the  
20:46:13 18 significant challenges facing the northeast due to  
20:46:17 19 the lack of pipeline infrastructure. However, how  
20:46:22 20 can the building of the Pendleton Compressor  
20:46:25 21 Station to push natural gas 200-plus miles into  
20:46:29 22 Canada improve the pipeline infrastructure in the  
20:46:32 23 northeast United States? It doesn't make sense to

20:46:36 1 build a facility to send the natural gas 200 miles  
20:46:39 2 in the opposite direction, does it?

20:46:42 3 Empire Pipeline has already stated that it  
20:46:46 4 in no way concedes any authority over the citing of  
20:46:50 5 the proposed Pendleton Compressor Station to the  
20:46:51 6 town.

20:46:52 7 **MR. BUECHLER:** You're at five minutes.

20:46:54 8 **MS. HARGREAVES:** They have continually  
20:46:56 9 bombarded our town officials' employees with reams  
20:46:58 10 of paperwork spouting a constant barrage of legal  
20:47:02 11 mumbo jumbo. Empire Pipeline knows that a small  
20:47:06 12 town like Pendleton doesn't have the expertise or  
20:47:08 13 the experience to properly evaluate such a complex  
20:47:12 14 facility and that we don't have the funding  
20:47:15 15 necessary to hire anybody that does -- who does,  
20:47:18 16 yet they've done everything they can do to pressure  
20:47:20 17 our officials into making hasty decision.

20:47:23 18 Just look at the 955 pages they submitted to  
20:47:27 19 you on April the 12th on the additional 104 pages  
20:47:31 20 they followed up with on May the 23rd. Why should  
20:47:34 21 our town concede any authority of what is built in  
20:47:39 22 our town to National Fuel, Empire Pipeline, or any  
20:47:43 23 of its many other subsidiaries or to any other

20:47:47 1 company, for that matter?

20:47:47 2           The Pendleton Zoning Board of Appeals should  
20:47:52 3 simply look at Killian Road, the surrounding area,  
20:47:55 4 and look at the town's own master plan, and reject  
20:47:56 5 the proposed Pendleton Compressor Station for what  
20:47:58 6 it is, a heavy industrial facility that does not  
20:48:01 7 conform with the character of the Town of  
20:48:04 8 Pendleton. Thank you.

20:48:11 9           **MR. BUECHLER:** Thank you. Holly Dawson.

20:48:24 10           **MS. DAWSON:** Hi. I'm going to read from  
20:48:26 11 these, so I brought copies. All right. My name is  
20:48:50 12 Holly Dawson, and I live on Beach Ridge Road, and  
20:48:54 13 this proposed compressor would be about a mile  
20:48:57 14 behind where I live, so it obviously directly  
20:49:00 15 affects my life.

20:49:03 16           So I gave you a copy of stuff that I pulled  
20:49:06 17 from your zoning laws, and the first one was  
20:49:12 18 247.32, and I highlighted the one part that  
20:49:16 19 actually says: The erection or use of any building  
20:49:18 20 or structure or the use of any land for the purpose  
20:49:23 21 which shall be noxious or injurious by reason of  
20:49:28 22 production or emission of dust, smoke, refuse --  
20:49:32 23 refuse matter, sorry, odor, gas, fumes, noise,

20:49:35 1 vibration, or similar disturbances or conditions  
20:49:39 2 shall be prohibited. I think that falls into that  
20:49:43 3 category.

20:49:43 4           And then under 247.2, you guys have written:  
20:49:49 5 For the purpose -- the zoning regulations are there  
20:49:51 6 for the purpose of promoting the public health,  
20:49:54 7 safety, morals, convenience or prosperity, and  
20:50:00 8 general welfare of the Town of Pendleton.

20:50:02 9           My public health, my safety, my house will  
20:50:06 10 be very close to this pipeline. My house will be  
20:50:09 11 very close to this compressor. My family, my  
20:50:12 12 friends, my neighbors are all directly affected.

20:50:16 13           So that is what you said you would do. That  
20:50:20 14 is what you're supposed to uphold. These zoning  
20:50:23 15 regulations, it says, have been designed to provide  
20:50:26 16 adequate light and air, my air. Reasonable  
20:50:30 17 consideration is also supposed to be given to the  
20:50:32 18 suitability for particular uses and with a view of  
20:50:37 19 conserving the value of buildings and encouraging  
20:50:39 20 the most appropriate use of land throughout the  
20:50:41 21 Town of Pendleton.

20:50:43 22           Now, the other thing is, constantly it's  
20:50:47 23 been mentioned about FERC giving its permission.

20:50:50 1 FERC is the federal government. FERC basically  
20:50:53 2 gives its permission always, always, always,  
20:50:56 3 always. So really it means very little to me,  
20:51:00 4 because they obviously -- if they actually really  
20:51:03 5 consider things, you may see some just -- where  
20:51:06 6 they might say no, and they don't say no.

20:51:09 7           And the other thing is, and I've talked  
20:51:11 8 about this and written about this is, you know, our  
20:51:13 9 country was founded on the principles and the idea  
20:51:17 10 of self-governance. Going very back to in Virginia  
20:51:22 11 in 1619 and in Plymouth in 1620, people created  
20:51:27 12 their own government. They made their own laws.  
20:51:31 13 We had a history of standing up for our own  
20:51:36 14 individual liberties, and just because the federal  
20:51:39 15 government has said they can do this doesn't mean  
20:51:43 16 we, who -- in the States and the people in the  
20:51:47 17 States who have been given our rights in the 10th  
20:51:51 18 Amendment of the Constitution to have to just say,  
20:51:54 19 okay, the federal government said we have to do it  
20:51:56 20 and, therefore, we should comply.

20:51:58 21           We have the right, and we should stand up  
20:52:01 22 for our right, for our life, for our safety, for  
20:52:05 23 the things that we believe are important. And you

20:52:08 1 guys, if you read your zoning, I don't see how that  
20:52:13 2 is irrelevant, and I don't see why any of us should  
20:52:16 3 not be here fighting for our own individual  
20:52:18 4 liberties within this town. Thank you.

20:52:30 5 **MR. BUECHLER:** Sue Phillips.

20:52:41 6 **MS. PHILLIPS:** Hello. My name is Sue  
20:52:45 7 Phillips, and I'm a resident of the Town of  
20:52:48 8 Pendleton since the early 1980s. The reason why we  
20:52:51 9 came out here is because we wanted to raise our  
20:52:54 10 family with open space, clean air, and a good  
20:52:56 11 school system.

20:52:57 12 We knew the quarry when we moved in, but I  
20:53:00 13 didn't know the contamination when I moved in. I  
20:53:03 14 learned of that by health questionnaires I would  
20:53:06 15 get in the mail: Does anybody in your family have  
20:53:09 16 cancer, does anybody in your family have thyroid  
20:53:11 17 disease, does anybody in your family have other  
20:53:13 18 illnesses. That scared the hell out of me. I was  
20:53:17 19 so angry at myself for pushing to move out in the  
20:53:21 20 country to raise our family in this good  
20:53:24 21 environment. And you know? I was right. It ended  
20:53:26 22 up being a Superfund site. I mean, really, you  
20:53:30 23 know.

20:53:30 1           Okay. Now let's go over to the air base. I  
20:53:33 2 love having the air base here. I love everything  
20:53:36 3 it stands for, don't get me wrong when I tell you  
20:53:38 4 this, but low-flying planes and living on a direct  
20:53:43 5 flight route has a lot of emission.

20:53:46 6           I had a pool in my yard for 22 years. For  
20:53:50 7 22 years I had an oily ring, black ring around my  
20:53:53 8 pool that we had to scrub out every single year  
20:53:56 9 before we could open it, empty it and open it up.

20:53:59 10           It's even worse now as far as flight  
20:54:02 11 pattern, not because of the air base, but because  
20:54:05 12 of Niagara Falls airport. They opened up to  
20:54:07 13 commercial flights. We have all kinds of flights  
20:54:09 14 coming all hours of the day and night now.

20:54:13 15           In the late '90s, we were told they were  
20:54:17 16 putting in a new gas line. I lived maybe a couple  
20:54:21 17 hundred feet from where they were putting this gas  
20:54:23 18 line across from Aiken Road.

20:54:24 19           So they dig this all up. We didn't know too  
20:54:27 20 much about it. It was kind of hush-hush really if  
20:54:30 21 you think about it. And, okay, the pipeline went  
20:54:32 22 in. Everything's fine and dandy. So they told us  
20:54:36 23 they were going to replace it with a larger



20:54:39 1 pipeline, okay, so that's what they did, never told  
20:54:43 2 us anything other than just replacing the pipe.

20:54:46 3           So as time's going on, we're starting to  
20:54:50 4 smell gas, okay? So I call my supplier, New York  
20:54:53 5 State Electric & Gas, have them -- call them up,  
20:54:57 6 tell them I smell gas. They would come to my  
20:54:59 7 house, check out my whole house, all my appliances,  
20:55:03 8 basement, furnace, everything. No problem.

20:55:06 9 Happens again. Call them up again. No problem.  
20:55:09 10 Again, still no problem.

20:55:11 11           Finally, they said it's in the air. And I'm  
20:55:14 12 thinking, why would it be in the air. Well, I  
20:55:17 13 never knew about the mercaptan facility back there.  
20:55:20 14 Nobody ever told us that.

20:55:22 15           Okay. Just give me a minute here. Okay.  
20:55:26 16 Now, to the mercaptan facility. I live probably a  
20:55:29 17 thousand feet from that, being on Aiken Road. We  
20:55:34 18 smell gas so much, it's unbelievable.

20:55:37 19           And like I said, I would call New York State  
20:55:40 20 Electric & Gas. But now, after learning about this  
20:55:42 21 compressor station, I found out there's a mercaptan  
20:55:45 22 pump back there, now we got to call National Fuel.  
20:55:48 23 We call National Fuel. The first thing they ask

20:55:51 1 you is what's your name and what's your address. I  
20:55:53 2 tell them. They say, well, we don't service you.  
20:55:57 3 And I knew that, but then I have to go through the  
20:55:59 4 whole thing to explain to them, well, I know you  
20:56:02 5 don't service us, but this mercaptan pump is over  
20:56:05 6 there, this is a big problem, this is going on.  
20:56:07 7 Okay. We'll send somebody out.

20:56:09 8 I would say it usually takes about 45 to 50  
20:56:12 9 minutes for somebody to come out to check to see  
20:56:14 10 why we have such a strong odor of gas there. Last  
20:56:18 11 summer my five-year-old grandson would come over --  
20:56:22 12 actually he was four at the time -- and it was a  
20:56:24 13 rainy day, and I have the Norman Rockwell porch,  
20:56:28 14 big porch, porch swing, wicker furniture, the whole  
20:56:31 15 bit.

20:56:32 16 So I'm sitting on the porch waiting for him  
20:56:33 17 to come in. So he comes, and we swung on the porch  
20:56:36 18 a little bit. He's looking at the frogs, because  
20:56:38 19 we had some frogs. And I said, let's go in the  
20:56:40 20 house and have some breakfast. So I took him in  
20:56:43 21 the house. He had some breakfast.

20:56:44 22 After that was done, he wants to go back  
20:56:46 23 outside. Okay. Let's go back outside. I opened

20:56:49 1 the door. I almost fell over. I could not believe  
20:56:52 2 the -- it was like boom, there it was, okay?

20:56:55 3 And I looked in the direction of the -- the  
20:56:58 4 utility road, and there was this big  
20:57:01 5 tractor-trailer tanker coming off there, and I even  
20:57:03 6 yelled out to him, what are you guys doing. He  
20:57:06 7 goes, oh, this is for your safety. I said, for my  
20:57:09 8 safety, I said, smell this, this is horrible.

20:57:11 9 So, naturally, we didn't go outside the rest  
20:57:13 10 of the day, and I didn't call, because now they  
20:57:16 11 told me what it was.

20:57:17 12 The next day I felt sicker than I ever felt  
20:57:20 13 before. I have constant sinus headaches, low-grade  
20:57:25 14 headaches. Inside my nose is constantly burning.  
20:57:28 15 I get this real heat flush. I just don't feel  
20:57:31 16 good, and I've been feeling like that for many  
20:57:34 17 years. I would go to the doctor and say, you know,  
20:57:36 18 I don't feel good. They can't say what's going on.

20:57:39 19 Now I'm thinking, okay, I have the Superfund  
20:57:43 20 site in my backyard, I have the mercaptan pump in  
20:57:46 21 my front yard, and I have all this air traffic with  
20:57:50 22 exhaust flying overhead.

20:57:51 23 **MR. BUECHLER:** You're at five minutes.

20:57:52 1           **MS. PHILLIPS:** Okay. Well, anyway, I have  
20:57:54 2 all this stuff going overhead. So apparently a  
20:57:57 3 combination of everything going on is not making  
20:58:00 4 for a safe place to live.

20:58:02 5           I retired a few years ago. I feel sicker  
20:58:04 6 now than I ever have. At least when I was working,  
20:58:07 7 I'd get out of the house for a couple hours, I'd  
20:58:10 8 feel better. Come back home, starts all over  
20:58:12 9 again.

20:58:13 10           Thank you for listening to me.

20:58:22 11           **MR. BUECHLER:** Phyllis Wass.

20:58:24 12           **MS. WASS:** I'm just going to submit this.  
20:58:34 13 It actually is just various studies of what happens  
20:58:41 14 when you have a compressor station, the blow-downs  
20:58:45 15 which will release methane gas. Everything has  
20:58:49 16 been documented, backed up by studies so that it  
20:58:55 17 isn't just made up environmental information.

20:59:00 18           A recent study by Cornell University  
20:59:06 19 investigated -- or estimated leaks, and they found  
20:59:09 20 that anywhere from 3.6 percent to 7.9 percent of  
20:59:15 21 unburned methane leaks out at gas well heads and  
20:59:19 22 along pipeline infrastructure before reaching end  
20:59:23 23 users. So this is going to impact us.

20:59:26 1           Also, there's a part of nitrous oxide and  
20:59:33 2 volatile organic compounds that produce  
20:59:37 3 ground-level ozone, and ozone inhibits growth, crop  
20:59:42 4 growth, by up to 30 percent, which we are a farming  
20:59:47 5 community. I farm my little garden, and many  
20:59:52 6 people around us do, and so all of this is  
20:59:54 7 documented.

20:59:55 8           Also, the radon gas, radioactive polonium,  
21:00:00 9 and lead. I mean, these are the reasons why we're  
21:00:02 10 all here, to ask this not be built. And, also,  
21:00:12 11 compressor stations are fully automated without  
21:00:16 12 staff present, and in emergencies local firemen,  
21:00:20 13 like Wendelville, must wait for gas pipeline crews  
21:00:25 14 to arrive from distant depots hours away.

21:00:29 15           So I'm just going to give this to you and  
21:00:33 16 thank you for your effort and all the work you have  
21:00:37 17 done and for all the residents who have worked so  
21:00:40 18 hard to document their research and give us a good  
21:00:47 19 fight against this compressor station.

21:01:13 20           **MR. BUECHLER:** Louise Van Wart.

21:01:16 21           **MS. VAN WART:** Good evening. How are you  
21:01:25 22 doing? Thank you so much for having us here  
21:01:28 23 tonight. We fully support the Board. You protect

21:01:31 1 our town, and this is all about fairness, America.  
21:01:36 2 We're getting into Memorial Day. The American  
21:01:38 3 dream, the home.

21:01:40 4 I run the RealtyUSA office on the Boulevard.  
21:01:44 5 We sell close to a hundred million dollars' worth  
21:01:46 6 of houses every year just from one office. We're  
21:01:49 7 doing all of Niagara County. This is going to  
21:01:52 8 affect our property values.

21:01:55 9 I am -- I have to get up and talk tonight  
21:01:58 10 because I am so disgusted what's going on in  
21:02:01 11 Western New York with all the contamination, all  
21:02:04 12 the toxins.

21:02:05 13 Right now I'm going to tell you about a  
21:02:07 14 couple of class action suits that are going on from  
21:02:09 15 homeowners. They're asking us to sell their  
21:02:12 16 houses, and I'm calling the DEC to find out what's  
21:02:14 17 going on, and then call NYSAR, the New York  
21:02:20 18 Association of Realtors, to see what legal  
21:02:23 19 implications I have with selling their houses with  
21:02:26 20 known toxins in their houses.

21:02:29 21 This is disgusting. We have another  
21:02:31 22 situation here tonight. I am just so livid with  
21:02:35 23 all of the stuff that's going on. When they came

21:02:38 1 to town, they sent out their notices. If it wasn't  
21:02:40 2 for Kim Lemieux here, I wouldn't have even gotten a  
21:02:44 3 notice. She brought it to my attention. Kim works  
21:02:47 4 with me at the real estate office. She said,  
21:02:50 5 Louise, did you know what was going on. I had no  
21:02:52 6 idea. I work 60, 70 hours a week. I didn't know  
21:02:55 7 what was going on. She said, oh, my God.

21:02:57 8           Come to find out, this is across the street  
21:03:00 9 from me. I'm over on Beach Ridge Road, right  
21:03:03 10 across the street, across the street where there's  
21:03:05 11 a subdivision that just got approved for 19 brand  
21:03:08 12 new houses starting at \$450,000, just within feet  
21:03:13 13 away from this compressor station.

21:03:15 14           We, the town, knowingly gave them permission  
21:03:18 15 to build this, put all this infrastructure in. I  
21:03:23 16 saw thousands of truckloads of dirt going in there,  
21:03:25 17 only to have it resulting that these people are  
21:03:28 18 going to contaminate the area. This isn't helping  
21:03:31 19 our town. This is bad.

21:03:33 20           Now, you are a Zoning Board. You are here  
21:03:36 21 to protect us, and we support you wholeheartedly,  
21:03:40 22 but what the heck is good for zoning laws if  
21:03:43 23 everybody has to bide by them except for big

21:03:46 1 companies? They got all this money. They've got  
21:03:49 2 all these attorneys. DEC denied them, but here  
21:03:53 3 they are. They're suing us all again.

21:03:55 4 They say DEC doesn't know. Well, let me  
21:03:57 5 tell you something: DEC does know, because right  
21:04:00 6 now, and I've got paperwork here, we have  
21:04:04 7 contamination down in Tonawanda over on Carney  
21:04:07 8 Street. National Fuel's involved. It's a  
21:04:10 9 Superfund. We had a sink hole.

21:04:12 10 I called all the public works people and the  
21:04:14 11 neighbors. Contamination is going in the canal.  
21:04:18 12 DEC has done boring tests. They figured out how  
21:04:21 13 far it's going to go. National Fuel has to clean  
21:04:23 14 this up. There's a Superfund. But they say it  
21:04:27 15 stopped. And you know what? That's not what the  
21:04:30 16 neighbors are saying.

21:04:31 17 I have another situation with a class action  
21:04:33 18 suit going on out in Wheatfield right now. What do  
21:04:36 19 I do? My agents want to sell these houses. What  
21:04:39 20 do I do?

21:04:40 21 Okay. So Durez has this contaminated area.  
21:04:44 22 It was a Superfund. It was filled over with soil  
21:04:48 23 from the Love Canal in 1968. You think when Love



21:04:53 1 Canal was found as a bad site that they would have  
21:04:56 2 gone and located all the soil that was dumped  
21:04:58 3 there? No, they didn't. So what do I do. So we  
21:05:02 4 have this house. I call up DEC. I need to know my  
21:05:06 5 legal rights. I would protect every one of my  
21:05:08 6 customers out there.

21:05:10 7 I called the DEC. I said, did you test that  
21:05:13 8 area, the people in that area said they're having  
21:05:16 9 leaks of contamination, okay? I call them up. The  
21:05:21 10 guy was very nice, and I listened to everything he  
21:05:24 11 had to say. He said, we've tested all the sites  
21:05:27 12 just within X amount of time. We found that there  
21:05:31 13 were higher than normal toxin levels there, but no  
21:05:34 14 higher than if you were going into Niagara Falls  
21:05:38 15 and you were on any city block. Guess what?  
21:05:44 16 Wrong.

21:05:44 17 There's a class action suit going on right  
21:05:46 18 now that I am not at liberty to tell you about, but  
21:05:51 19 they found very high levels of toxins. People are  
21:05:55 20 moving away from their houses without even selling  
21:05:57 21 them, because they can't sell them. They're higher  
21:06:00 22 than what the DEC said. So it's -- the DEC said  
21:06:03 23 that it was okay.

21:06:05 1           Next situation, Love Canal. DEC goes in.  
21:06:08 2 They clean it all up. It's all great. They're  
21:06:11 3 selling more houses. Guess what? There's still  
21:06:14 4 leaking going on over there. Still leaking going  
21:06:16 5 on. DEC said it was okay to reopen that. Guess  
21:06:20 6 what? It wasn't. There's leaking going on.

21:06:22 7           Okay. So what -- and I know a lot more  
21:06:26 8 going on with some of these houses than the normal  
21:06:29 9 public knows. I've been in the business for 33  
21:06:31 10 years.

21:06:31 11           **MR. BUECHLER:** You're approaching at five  
21:06:34 12 minutes.

21:06:35 13           **MS. VAN WART:** Okay. So I'll wind up in a  
21:06:36 14 second.

21:06:37 15           But the problem is, DEC said those were all  
21:06:39 16 okay. They said their project was not okay, that  
21:06:42 17 it was contaminated. So if all these things were  
21:06:44 18 not okay -- were okay with the DEC and this isn't,  
21:06:48 19 guess what? This is really bad, you know.

21:06:53 20           So the thing of it is, for light industrial,  
21:06:59 21 for the code published, it just said that this --  
21:07:01 22 the intent of the industrial -- light 1 industrial  
21:07:05 23 zone is to provide for wholesale and warehousing

21:07:08 1 use as well as those industrial uses that include  
21:07:11 2 fabrication, manufacturing, assembly, or processing  
21:07:13 3 of materials that are in refined form and that do  
21:07:16 4 not in their transformation create smoke, gas,  
21:07:20 5 odor, dust, noise, vibration of -- vibration of  
21:07:24 6 earth, soot or lighting to a degree that is  
21:07:28 7 offensive when measured at the property line of  
21:07:31 8 subject property.

21:07:33 9           And it also said that it's -- it's stated  
21:07:36 10 that its maximum building height is 35 feet, and  
21:07:39 11 their building heights are not 35 feet. In  
21:07:42 12 addition to that, when they did the proposal --

21:07:44 13           **MR. BUECHLER:** You're over six now, so wind  
21:07:47 14 it down.

21:07:48 15           **MS. VAN WART:** Just a quick thing.

21:07:50 16           When they were proposing this, I went on  
21:07:52 17 their site visitation and into the site visitation,  
21:07:55 18 which I wasn't invited to and I had to call to go  
21:07:58 19 to that, because they told me I was out of the  
21:08:00 20 area, and I'm across the street from it. I go  
21:08:03 21 there, and I see under proposal they have a  
21:08:06 22 pipeline going across the street from my house,  
21:08:09 23 right by my house, within 50 feet, with a

21:08:13 1 hundred -- is it PSI for the speed?

21:08:18 2 **UNIDENTIFIED SPEAKER:** 1400.

21:08:19 3 **MS. VAN WART:** Now, would you like that pipe  
21:08:21 4 going 50 feet away from your house? I want to know  
21:08:24 5 what the explosion level is for that. What is the  
21:08:27 6 radius if that explodes at that compression station  
21:08:30 7 with all those kids in that area?

21:08:31 8 **MR. BUECHLER:** I'm going to have to cut you  
21:08:33 9 off. We're at seven now.

21:08:35 10 **MS. VAN WART:** That's fine. Thank you very  
21:08:35 11 much. I appreciate your time.

21:08:42 12 **MR. BUECHLER:** We're going to take a short  
21:08:43 13 break.

21:08:45 14 (A recess was then taken.)

21:14:36 15 **MR. BUECHLER:** Kim Lemieux.

21:14:38 16 **MS. LEMIEUX:** My name is Kimberly Lemieux.  
21:15:09 17 I am a Pendleton resident. I'd like to just make a  
21:15:12 18 comment in regard to Sue Phillips' comment.

21:15:16 19 I have also called 911 specifically numerous  
21:15:20 20 times about the Aiken Road metering station. I  
21:15:23 21 also have opened a public service complaint, a  
21:15:27 22 commission complaint with them. I don't have the  
21:15:29 23 file number with me now, but I do have

21:15:31 1 documentation.

21:15:32 2 I just want you to understand that mercaptan  
21:15:35 3 is a hazardous waste, and in order to transport  
21:15:37 4 that, you have to have that HAZMAT license  
21:15:39 5 designation.

21:15:40 6 But I also want to make mention that gas is  
21:15:43 7 actually burned at that metering station, and if  
21:15:45 8 you go back there, you're essentially punched by  
21:15:47 9 that mercaptan smell, as I am almost I would say at  
21:15:52 10 least once a week as I travel down Aiken every  
21:15:54 11 single morning, especially when it's a cooler  
21:15:57 12 morning, have your air temperature -- or have your  
21:16:01 13 cloud cover, if you will.

21:16:02 14 But I do want to make mention that benzene  
21:16:05 15 sits on top of water, which could cause that ring  
21:16:08 16 on the pool.

21:16:09 17 I do want to just talk about Section  
21:16:13 18 247.32-D and the fact that you do have that  
21:16:15 19 responsibility of looking at our health and safety  
21:16:17 20 of the residents. Recent studies have shown that  
21:16:20 21 emissions from compressor stations are greater than  
21:16:24 22 at the actual drilling rigs.

21:16:26 23 There are many contaminants that come out of

21:16:29 1 the compressor station. Mr. Walters used the word  
21:16:32 2 stealthing in regard to landscaping. The air  
21:16:35 3 pollution coming out of these 70-foot chimneys,  
21:16:40 4 chemical-spewing chimneys, is a stealth killer.  
21:16:44 5 Cancer has a long latency, and the effects may not  
21:16:47 6 appear for years, so that's that stealth effect.

21:16:50 7           Some of the air emissions and health effects  
21:16:52 8 are VOCs. They cause cancer, neurotoxicity,  
21:16:58 9 infertility. Benzene, cancer, endocrine  
21:17:00 10 disruption, infertility. Xylene, endocrine  
21:17:04 11 disruption. Toluene, endocrine disruption,  
21:17:05 12 infertility. Formaldehyde, cancer, infertility.  
21:17:11 13 Radon, lung cancer, the leading cause of lung  
21:17:15 14 cancer among women, specifically who use fuel to  
21:17:18 15 cook in their home, unfortunately. Women generally  
21:17:23 16 cook, I suppose.

21:17:24 17           Some of the diseases to the toxic exposures  
21:17:28 18 are inhalation, breathing the polluted air. The  
21:17:31 19 oral, drinking polluted water, eating contaminated  
21:17:35 20 foods grown in gardens. Hand to mouth behaviors  
21:17:38 21 with young children. Transdermal, any absorption  
21:17:41 22 across the skin, whether showering or bathing or  
21:17:44 23 swimming. And then, of course, across the placenta

21:17:46 1 for the mother and the child.

21:17:48 2           Starpoint School is just 2.8 miles away. As  
21:17:52 3 you know, I'm a schoolteacher. Children are at my  
21:17:55 4 heart. As a mother, they're at my heart. I love  
21:17:58 5 them dearly, and there are many children, some of  
21:18:00 6 your grandchildren possibly, your children went to  
21:18:03 7 Starpoint schools. They are there at that school  
21:18:05 8 for almost eight hours a day, if they are in any  
21:18:08 9 sports or any activities after school. The  
21:18:10 10 teachers, the faculty, the staff are all there as  
21:18:13 11 well.

21:18:13 12           Our most vulnerable population is our  
21:18:16 13 children. They have faster respiratory rates than  
21:18:20 14 adults, so they inhale relatively greater  
21:18:22 15 quantities of airborne contaminants. They're  
21:18:23 16 smaller, they're closer to the ground where all the  
21:18:25 17 contaminants really -- the particulate matter  
21:18:28 18 specifically, where they can inhale it a lot  
21:18:31 19 easier. They also have underdeveloped immune and  
21:18:34 20 metabolic systems and cannot detoxify themselves.

21:18:37 21           What you may not know is NFG, Empire, I'm  
21:18:40 22 not sure which one, but in conjunction with  
21:18:43 23 Tennessee Gas, they co-own the Cambria compressor.

21:18:47 1 I ask you to go there. It's just three miles away,  
21:18:50 2 on the other side of Starpoint School. So now  
21:18:53 3 we'll have kind of a nice envelope with this  
21:18:55 4 compressor station, if it gets built. It's  
21:18:58 5 approximately 1600 horsepower. I'd like you to  
21:19:02 6 consider the cumulative effect and the impact of  
21:19:05 7 our health being in that envelope.

21:19:07 8 Another thing that you should really  
21:19:09 9 consider is the noise pollution. I want you to  
21:19:12 10 understand that the compressor station, being  
21:19:15 11 22,000 horsepowers, is equivalent to five and a  
21:19:20 12 half train locomotives.

21:19:22 13 Now, I live on Beach Ridge. I don't know  
21:19:24 14 where all of you live or where some of the  
21:19:26 15 residents here live, but I can hear the Route 31  
21:19:29 16 locomotive going down that rail track every single  
21:19:32 17 day. I hear the whistle. I can feel the rumble  
21:19:35 18 living on that ridge. I get the vibrations in my  
21:19:38 19 house. I get the blow-downs at Cambria compressor.  
21:19:43 20 I've timed them. I've recorded them. I know when  
21:19:45 21 they happen. I can pull their records, if they let  
21:19:48 22 me, and make those matches. I can tell you  
21:19:50 23 exactly, because I'm a night owl. I stay up pretty



21:19:54 1 late, and they're pretty early in the morning.

21:19:56 2 As Pendleton residents yourself, you're

21:19:59 3 aware of our amazing growth that our town is

21:20:01 4 experiencing, specifically our residential growth.

21:20:03 5 We have Beach Ridge Meadows that's all ready been

21:20:06 6 mentioned that's 1200 feet away from this

21:20:08 7 compressor station. These people who are building

21:20:10 8 \$450,000 homes certainly are not aware of what's

21:20:13 9 happening.

21:20:14 10 **MR. BUECHLER:** You're at five minutes.

21:20:15 11 **MS. LEMIEUX:** Thank you. I'm almost done.

21:20:17 12 We know of another subdivision that's also

21:20:19 13 in the planning stages, very close to that

21:20:23 14 compressor station, that should be considered when

21:20:25 15 making this decision.

21:20:27 16 We know that these homes typically have the

21:20:30 17 highest concentration of children, young children,

21:20:33 18 mothers with babies in their uterus, and certainly

21:20:38 19 that is something you have to consider, too.

21:20:41 20 What will happen to our beautiful, peaceful

21:20:44 21 town when this chemical-spewing monstrosity comes

21:20:47 22 in? If you're not familiar, Starpoint Schools is

21:20:50 23 ranked one of the top ten schools in Western

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21:20:52 1 New York. I think they're number eight right now,  
21:20:55 2 and I know for certain that they're going to climb  
21:20:57 3 to those top numbers, because if you know Dr. Sean  
21:21:00 4 Croft, I assure you, he is doing a fabulous job  
21:21:03 5 over there.

21:21:04 6 I want you to understand, with all of that  
21:21:06 7 in consideration, I am requesting that you stand by  
21:21:09 8 the building department's decision. This project  
21:21:13 9 does not conform to our town, to the character of  
21:21:15 10 our town, to the well-being of our residents, and I  
21:21:20 11 ask you to please use careful consideration when  
21:21:23 12 you decide.

21:21:24 13 Thank you very much for your service, and I  
21:21:26 14 hope you have a wonderful Memorial Day.

21:21:32 15 **MR. BUECHLER:** Mr. Lemieux.

21:21:36 16 **MR. LEMIEUX:** Good evening. Thank you for  
21:21:44 17 taking the time. My name is Deke Lemieux.

21:21:49 18 Empire is not a public utility. Basically,  
21:21:54 19 as Ron Kramer put it, they are a trucking company  
21:21:57 20 or a conduit for this gas to go from point A to  
21:22:00 21 point B. Therefore, we as stakeholders and town  
21:22:04 22 residents, we do not receive any service from it.  
21:22:07 23 Therefore, they are not an essential service nor a

21:22:09 1 public utility at all.

21:22:12 2 In the cases that they have stated, the  
21:22:15 3 Con Ed versus Hoffman, in this case there was a  
21:22:18 4 plant already there. They wanted to make changes  
21:22:20 5 to it. It would have cost the town plenty, you  
21:22:22 6 know, if they didn't make these changes, so that  
21:22:25 7 case is kind of irrelevant in this whole  
21:22:28 8 circumstance.

21:22:28 9 There's no public necessity for us. NFG  
21:22:32 10 states in their investors and earnings call that  
21:22:34 11 all this gas is going to the Dawn hub in Canada.  
21:22:40 12 So, if anything, this project will harm our area.  
21:22:43 13 It will harm our area because basically they will  
21:22:46 14 be taking the gas away with this project.

21:22:49 15 For example, all the gas going through the X  
21:22:52 16 line that's coming up to the station, all that gas  
21:22:55 17 will now be going over to Canada. So we wouldn't  
21:22:59 18 be getting that gas.

21:23:01 19 Then, all the gas that's supposed to be  
21:23:03 20 coming off that X -- off the Empire line into the  
21:23:06 21 XM-10, the one they put in there with their  
21:23:10 22 mercaptan station and all that, they are now going  
21:23:12 23 to take that and turn it the other way and go back

21:23:15 1 into the Empire State pipeline and go back over to  
21:23:19 2 Canada, so we won't be getting that gas.

21:23:21 3           And, thirdly, they are reversing the flow of  
21:23:26 4 the Empire State pipeline. So instead of us  
21:23:29 5 getting the gas from Canada, they are actually  
21:23:31 6 taking that gas and keeping it in Canada, and  
21:23:34 7 they're going to take their gas and pump it into  
21:23:37 8 Canada.

21:23:37 9           So if anything, this project hurts our area.  
21:23:40 10 So, I mean, for essential services, it's the  
21:23:42 11 reverse. Our essential services are leaving. Our  
21:23:46 12 public utilities, our gas is leaving, the stuff  
21:23:50 13 that is coming from Canada and all that.

21:23:53 14           National Fuel and Empire, they state that  
21:23:56 15 the gas will supply our area. It's a lie. I mean,  
21:23:59 16 this gas, once it hits that Empire State pipeline,  
21:24:03 17 it's going straight over.

21:24:04 18           If it was going the opposite way, yeah, it  
21:24:07 19 probably would have gone in our area, but all this  
21:24:10 20 does is pump the gas to Canada, Dawn hub, they're  
21:24:15 21 getting top dollar, and then all this gas from  
21:24:17 22 there, who knows where it's going to go.

21:24:19 23           NFG says it will tie in -- there's a tie-in

21:24:23 1 at the TGP, the Tennessee Gas pipeline at Wales.  
21:24:27 2 That pipeline, that tie-in there, is going to be  
21:24:33 3 switched.

21:24:35 4 So -- yeah, that pipeline's going to be  
21:24:42 5 switched. So there's 140 dekatherms of gas going  
21:24:46 6 to the TGP 200 line with the new interconnect in  
21:24:49 7 Wales. This was supposed to happen with an  
21:24:50 8 in-service date of November 1st, 2016.

21:24:52 9 We also know that Seneca has requested the  
21:24:55 10 primary delivery point for the additional  
21:24:56 11 quantities to be moved from the TGP 200 line  
21:24:59 12 interconnect to National Fuel's existing  
21:25:01 13 interconnect with Transcontinental Gas Pipeline  
21:25:05 14 Company, LLC, at Lititz, Pennsylvania, on November  
21:25:09 15 1st, 2008.

21:25:10 16 Obviously this pipeline's not going to be  
21:25:12 17 built by then, so there would be no gas being  
21:25:15 18 delivered at that TGP 200 line, which Mike Kasprzak  
21:25:20 19 said they were going to deliver maybe in our area,  
21:25:23 20 which is not going to happen. That's right in  
21:25:27 21 their filings. I'll submit this paper so you have  
21:25:30 22 the reference on it.

21:25:32 23 So after it goes to the Lititz station, NFG

21:25:37 1 states that this project -- so they're not -- they  
21:25:41 2 say they're not even going to be in service until  
21:25:43 3 2020, 2020. So there's definitely no way it will  
21:25:47 4 be there.

21:25:49 5           When this project started, National Fuel,  
21:25:54 6 they put out a notice of open season, which is  
21:25:56 7 basically trying to get people to buy the gas and,  
21:25:59 8 you know, actually have end customers. There was  
21:26:02 9 nobody who bid on this.

21:26:03 10           When they did the Northern Access 2015 line,  
21:26:06 11 they had a lot of people bidding on this thing. So  
21:26:09 12 this one, you know who the end consumer is? The  
21:26:13 13 people mining it in Pennsylvania. So they're  
21:26:15 14 mining it there. They're buying it and selling it  
21:26:18 15 to the Dawn hub. From there, who knows where it's  
21:26:21 16 going to go.

21:26:22 17           But from there, once it goes into Canada, I  
21:26:26 18 have -- the National Energy Board had put out in  
21:26:31 19 2016 the transportation system engineering. They  
21:26:38 20 say -- in Section 4.3.2, they state that between  
21:26:42 21 2010 and 2015 exports to the U.S. northeast  
21:26:48 22 decreased by 44 percent.

21:26:50 23           So they're saying this gas is going to come

21:26:53 1 around going to New York State. No, it's not.

21:26:55 2 **MR. BUECHLER:** You're at five minutes.

21:26:56 3 **MR. LEMIEUX:** Okay. They say we have a  
21:26:58 4 problem Upstate with not getting gas. It's not  
21:27:01 5 from Canada. It's not from going to Canada and  
21:27:04 6 coming up around, because it's decreasing coming  
21:27:05 7 from Canada.

21:27:08 8 So other than that, there are alternative  
21:27:15 9 sites they can place this thing. That's easy.  
21:27:17 10 They just don't want to spend the money. Take it  
21:27:20 11 up to the Lockport Compressor Station or whatever.  
21:27:23 12 They can go electric -- electric compressor  
21:27:27 13 stations, also. That would be the ideal way to go.  
21:27:31 14 That would take a lot of the pollution out, a lot  
21:27:35 15 of the vibration and all that.

21:27:37 16 And another thing about NFG, they state, you  
21:27:40 17 know, the stealthy, you know, they're making it  
21:27:45 18 looking like it's blending into stuff, but they  
21:27:47 19 don't take care of their properties. Down in  
21:27:49 20 Porterville, there's trees that are just dying that  
21:27:49 21 they planted that are supposed to be stealthy for  
21:27:52 22 this project. They're dying. You can see it.  
21:27:56 23 Obviously, we know the mercaptan leaks over here

21:27:56 1 so -- I mean, they don't take care of their  
21:27:56 2 property.

21:28:00 3 So, I mean, if you let this -- if this goes  
21:28:01 4 through, I mean, it's just going to be another  
21:28:03 5 project that they're going to let go and just let  
21:28:08 6 pollute so --

21:28:09 7 **MR. BUECHLER:** You need to wrap up.

21:28:11 8 **MR. LEMIEUX:** Yeah. So, I mean, that's  
21:28:13 9 about it. I'm going to hand in my papers and, you  
21:28:15 10 know, there may be a couple -- little bit more  
21:28:16 11 information on there, but that's about it.

21:28:18 12 But I trust you guys to make the right  
21:28:21 13 decision for our town, and -- yeah, basically, I  
21:28:31 14 mean, FERC is the one that makes -- that made a bad  
21:28:35 15 decision, but all this gas going to Canada,  
21:28:39 16 that's -- FERC's just, you know, okaying all these  
21:28:41 17 things, but you guys don't have to worry where the  
21:28:44 18 gas goes. All you know is that it's not essential,  
21:28:47 19 because it's not essential. But thank you.

21:28:57 20 **MR. BUECHLER:** Last person signed up, Diana  
21:29:11 21 Strablow.

21:29:22 22 **MS. STRABLOW:** Good evening. I'll be very  
21:29:24 23 brief. I wasn't planning on speaking tonight,



21:29:29 1 because I don't live in the town. I am with the  
21:29:33 2 Sierra Club, and I live in Kenmore, New York.

21:29:36 3 And I just want to thank you very much for  
21:29:39 4 listening to your residents. You're doing an  
21:29:42 5 amazing job. Listening to them and this group of  
21:29:47 6 residents that you have has done an amazing job for  
21:29:51 7 well over a year now researching this and  
21:29:55 8 expressing their concern about this project.

21:29:59 9 But a couple of points that I'd like to  
21:30:02 10 make. First of all, National Fuel keeps holding up  
21:30:04 11 this thick environmental assessment from the  
21:30:08 12 Federal Energy Regulatory Commission, and I didn't  
21:30:11 13 understand this process when I started and kept  
21:30:15 14 saying, well, why aren't you considering just not  
21:30:19 15 building the pipeline as one of the options. And  
21:30:22 16 finally got the answer, that that's not something  
21:30:26 17 they would do. They get handed this capacity that  
21:30:30 18 National Fuel wants to deliver, and some way,  
21:30:34 19 somehow, it's their job to approve that.

21:30:40 20 FERC does not deny projects. They've denied  
21:30:43 21 one project in ten years, so not building the  
21:30:50 22 pipeline, not putting in a compressor station was  
21:30:53 23 never an option. So having Federal Energy

21:31:00 1 Regulatory Commission approval is quite  
21:31:01 2 meaningless.

21:31:02 3           But the DEC, fortunately, has done their  
21:31:05 4 job, and it was inherent in the process that the  
21:31:08 5 DEC do that job. The New York State DEC is given,  
21:31:16 6 through federal authority, they are given authority  
21:31:18 7 to regulate under the Clean Air and the Clean Water  
21:31:23 8 Act, and as far as is I know, the air permits for  
21:31:25 9 this, by the way, have not been issued. But the  
21:31:29 10 water permit was denied for the 97-mile pipeline.  
21:31:31 11 So this project cannot be built without that water  
21:31:35 12 permit. So why National Fuel is putting you  
21:31:37 13 through all of this right now, I don't quite  
21:31:40 14 understand.

21:31:43 15           But as far as whether this is a utility and  
21:31:50 16 an essential service, that's what compelled me to  
21:31:54 17 get up here and speak, was hearing National Fuel  
21:31:57 18 say this. I just could not believe what I was  
21:32:00 19 hearing, that they are contending that this is a  
21:32:02 20 utility.

21:32:04 21           It's very interesting that I was at a Public  
21:32:08 22 Service Commission hearing on October 27th of 2016  
21:32:12 23 where National Fuel wanted to raise their rates,

21:32:17 1 and I specifically asked the question, because I  
21:32:20 2 was concerned about this pipeline, will any of that  
21:32:23 3 money from the rate increase be used to build this  
21:32:27 4 pipeline. And I was told no by Karen Merkel, who's  
21:32:33 5 sitting here tonight, told me no, none of that  
21:32:36 6 money would be used to build the pipeline, because  
21:32:39 7 National Fuel is actually two separate entities.  
21:32:41 8 They have a utility side, and they have a supply  
21:32:46 9 side. And this pipeline was on the profit supply  
21:32:50 10 side, not the utility side.

21:32:53 11 So how they are standing here tonight and  
21:32:55 12 saying that this is a public utility, I do not  
21:32:58 13 understand. I think it points to the fact that  
21:33:00 14 they cannot be trusted. They will say whatever  
21:33:03 15 they need to say to get this pipeline built.

21:33:11 16 And if you want an example of an existing  
21:33:14 17 compressor station that National Fuel is operating,  
21:33:18 18 go visit the Porterville Compressor Station in Elma  
21:33:22 19 and walk around that neighborhood and talk to some  
21:33:24 20 of the residents and see what they have had to deal  
21:33:27 21 with with that aging compressor station and the  
21:33:30 22 smells that emanate from that compressor station  
21:33:34 23 and the incidents that have happened, including one

21:33:37 1 on February 8th, the day of their DEC hearing in  
21:33:40 2 St. Bonaventure.

21:33:42 3 As we were driving down, it was an overcast  
21:33:46 4 day with heavy cloud cover, and went to the hearing  
21:33:52 5 and listened to one person after another from  
21:33:55 6 National Fuel get up and say how safe and reliable  
21:33:59 7 they are. They would never build anything that  
21:34:01 8 wasn't safe.

21:34:02 9 And on that same day, there was an incident  
21:34:06 10 where there was a -- gas fumes, mercaptan fumes  
21:34:10 11 that went for a radius of about eight miles around  
21:34:13 12 the neighborhood. People were evacuated from their  
21:34:17 13 homes. Children were on -- held in schools because  
21:34:22 14 the schools didn't know what to do, because if they  
21:34:25 15 let them out, they were smelling this overpowering  
21:34:29 16 smell of gas.

21:34:30 17 And National Fuel came up in the aftermath  
21:34:34 18 with three different stories about what happened  
21:34:37 19 that day.

21:34:37 20 **MR. BUECHLER:** You're at five minutes.

21:34:38 21 **MS. STRABLOW:** Thank you.

21:34:40 22 **MR. BUECHLER:** Thank you.

21:34:52 23 (Discussion off the record.)

21:35:05 1           **MR. BUECHLER:** All right. So I'll repeat  
21:35:07 2 what I said earlier. We'll accept written comments  
21:35:10 3 up until the 16th postmarked or hand delivery to  
21:35:14 4 the town clerk's office. And as a reminder, the  
21:35:17 5 town clerk closes at 4 o'clock, so if you're going  
21:35:21 6 to hand deliver it, that's your deadline on that  
21:35:24 7 day. Otherwise, this hearing is closed.

8           (Proceedings concluded at 9:35 p.m.)

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