

STATE OF VERMONT
PUBLIC SERVICE BOARD

Petition of Vermont Gas Systems, Inc., requesting)	Public Service Board
a Certificate of Public Good pursuant to 30 V.S.A.)	Docket No. 8180
§ 248, authorizing the construction of the)	
"Addison Rutland Natural Gas Project Phase 2)	
(ARNGP Phase 2)" to extend natural gas)	
transmission facilities in Franklin and Addison)	
Counties, for service to the Ticonderoga mill in)	
New York, and construction of two Community)	
Gate Stations for distribution service in the towns)	
of Cornwall and Shoreham, Vermont)	

PREFILED TESTIMONY OF KEVIN BURKE

On Behalf of the Vermont Agency of Natural Resources, Department of Environmental
Conservation, Watershed Management Division

Summary of Testimony

Kevin Burke discusses the requirement for a Lakes and Ponds Encroachment Permit
and addresses the potential impacts of the project on Shorelines under Criterion 1(F).

1 **Q1. Please state your name, place of employment and your position.**

2 A1. Kevin Burke, Vermont Department of Environmental Conservation, Watershed
3 Management Division. I am employed as an Environmental Analyst in the Lakes and
4 Ponds Management and Protection Program (Lakes and Ponds). Within Lakes and Ponds,
5 I coordinate the Lake Encroachment Permitting Program.

6

7 **Q2. Please describe your educational background and professional background and any**
8 **relevant training or certifications you have received.**

9 A2. My resume is attached as Exhibit ANR KB-1.

10

11 **Q3. Have you previously testified before the Public Service Board, the Environmental**
12 **Court, or District Commissions?**

13 A3. I have previously testified before the Public Service Board, the Environmental Court, and
14 District Commissions.

15

16 **Q4. Please briefly describe the responsibilities of your job.**

17 A4. I coordinate the Lake Encroachment Permit Program. In that role, I provide technical
18 review of lake encroachment permit applications. I conduct compliance inspections
19 related to permitted and unpermitted encroachments, and provide education and outreach
20 to the public in relation to projects along the lakeshore that may require a lake
21 encroachment permit. I also provide review and comments on projects subject to Act

1 250 and 248 jurisdiction that have the potential for impacts to lakes and ponds and
2 adjacent shoreland/shoreline areas.

3

4 **Q5. Is it part of your job responsibilities to evaluate development projects for shoreline**
5 **impacts under the Act 250 shoreline criteria 1(F)?**

6 A5. Yes. Under criteria 1(F), any applicant proposing a project along a lake, pond, or river
7 shoreline must show that the location is necessary to fulfill the project's purpose. The
8 applicant must also prove that the natural condition of the shoreline will be maintained to
9 the greatest feasible extent. This may mean planting new vegetation to shield the project
10 from the waterbody, and/or to stabilize the bank against erosion. Also, a project must not
11 diminish continued public access to public waters.

12

13 **Q6. Have you reviewed the Petition filed in connection with the Vermont Gas, Phase II**
14 **project?**

15 A6. Yes. I have reviewed the proposed route of the project. My review has been limited to
16 the location for the proposed lake crossing and adjacent shoreline areas on the Vermont
17 side of the project and I have reviewed testimony filed thus far by the Petitioner
18 regarding the same project areas.

19

20 **Q7. Are there any locations along the Vermont Gas Phase II project that will impact**
21 **shorelines?**

1 A7. The segment of the project that will cross Lake Champlain has the potential for impacts
2 to shorelines.

3

4 **Q8. Will the Project require a lake encroachment permit?**

5

6 A8. The portion of the project that is proposed to extend below the lakebed beyond the mean
7 water level of Lake Champlain (public waters), including for the installation and
8 operation of the proposed gas pipeline, will require a lake encroachment permit under 29
9 V.S.A. Chapter 11.

10

11 **Q9. Please describe the process and standard for evaluating a project for a lake
12 encroachment permit?**

13 A9. The Department's Lakes and Ponds Management and Protection Program will, through
14 review of the lake encroachment permit application, evaluate whether the encroachment
15 will adversely affect the public good. The Program will consider the effect of the
16 proposed encroachment as well as the potential cumulative effect of existing
17 encroachments on water quality, fish and wildlife habitat, aquatic and shoreline
18 vegetation, navigation, and other recreational and public uses, including fishing and
19 swimming, consistency with the natural surroundings and consistency with municipal
20 shoreland zoning ordinances or any applicable state plans. In addition, the public trust
21 doctrine requires the Department to determine what public trust uses are at issue, to

1 determine if the proposal provides a public benefit, to determine the cumulative effects of the
2 proposal on the public trust uses, and to balance the beneficial and detrimental effects of the
3 proposal.

4
5 **Q10. Has Petitioner applied for a lake encroachment permit?**

6 A10. No.

7
8 **Q11. Is any part of the Lake Champlain crossing subject to the Army Corps of Engineers
9 or federal regulations?**

10 A11. It is my understanding that the proposed pipeline crossing under Lake Champlain is
11 subject to a permit from the Army Corps of Engineers. The project may also be subject
12 to additional federal permits. I defer all determinations regarding the need for federal
13 permits to the Army Corps of Engineers and the federal government.

14
15 **Q12. Please explain/describe any coordination between the State and Federal Agencies in
16 evaluating the Lake crossing for the Project?**

17
18 A12. The Watershed Management Division anticipates coordination with the Army Corps of
19 Engineers in evaluation of project impacts in accordance with applicable permitting
20 requirements and regulations, including but not limited to review of the proposed
21 crossing under Lake Champlain.

1

2 **Q13. Do you have any recommendations for how the Project can avoid or minimize**
3 **impacts on shorelines and the lake?**

4

5 **A13.** At this time, no Lake Encroachment Permit application has been filed with the
6 Department, and as such I do not have detailed site specific information regarding the
7 project. Consequently, at this time, I have no recommendations for the Petitioner in
8 regards to avoiding and minimizing impacts on shorelines and the lake.

9

10 **Q14 The Petitioner has not obtained field access for a portion of the project area. Does**
11 **this impact your evaluation of shorelines for this Project?**

12 **A14.** Here again, I cannot fully evaluate the potential impacts of the project on shorelines
13 without site specific information regarding the project. As such I have no
14 recommendations for the Petitioner in regards to avoiding and minimizing impacts on
15 shorelines and the lake. Project areas must be evaluated by the Petitioner to identify all
16 site characteristics that may be necessary for a complete permit application and for
17 review of potential adverse impacts to shorelines and the lake.

18

19 **Q15 In addition to the information provided in the Section 248 Petition, what**
20 **information will be needed to evaluate a lake encroachment permit?**

1 **A15.** Sufficient information needs to be provided to allow the Department to conduct the
2 permit application review as described in A9 above.

3

4 **Q16. Based upon your review of the Project, do you have any recommendations for**
5 **practices or measures that could prevent erosion or control stormwater runoff from**
6 **the Project construction?**

7 A16. Best management practices should be used to minimize/avoid adverse impacts, including
8 but not limited to those used to manage stormwater runoff to minimize risk to water
9 quality in the lake. Limiting concurrent earth disturbance, prompt stabilization of
10 disturbed areas, implementing structural controls, and appropriate construction oversight,
11 are some practices that would minimize risk associated with erosion and stormwater
12 runoff.

13

14 **Q17. Based upon the information provided in the Section 248 petition are you able to**
15 **offer an opinion or recommendation to the Board on whether the Project will have**
16 **an undue adverse impact on shorelines?**

17 A17. Not at this time, particularly without the submittal of a Lake Encroachment Permit
18 application. I recommend that the Board condition any Certificate of Public Good on the
19 the Petitioner's receipt of and compliance with a Lake Encroachment Permit.

20

21 **Q18 Does that conclude your testimony?**

1 A18. Yes.