STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7970

Amended Petition of Vermont Gas Systems, Inc. for a certificate of public good, pursuant to 30 V.S.A. § 248, authorizing the construction of the "Addison Natural Gas Pipeline" consisting of approximately 43 miles of new natural gas transmission pipeline in Chittenden and Addison Counties, approximately 5 miles of new distribution mainlines in Addison County, together with three new gate stations in Williston, New Haven and Middlebury, Vermont	)

Order entered: 3/10/2014

ORDER RE MOTIONS TO ALTER OR AMEND JUDGMENT

I. Introduction

In this Order we deny the Motion of Nathan and Jane Palmer ("Palmer Motion"), grant the Motions of the Department of Public Service ("DPS" or "Department") and the Town of New Haven, and amend and alter our December 23, 2013, Order and Certificate of Public Good as discussed below.

On December 23, 2013, the Public Service Board ("Board") approved with conditions the petition of Vermont Gas Systems, Inc. ("VGS" or the "Company") to extend its natural gas pipeline system to Vergennes and Middlebury ("Project") in an Order and Certificate of Public Good ("CPG") issued in this Docket (the "December 23rd Order").

On January 6, 2014, Nathan and Jane Palmer ("Palmers") submitted through counsel a Motion to Alter or Amend the December 23rd Order.[1]

On January 8, 2014, the Vermont Department of Public Service ("DPS" or the "Department") filed a Motion to Alter or Amend the December 23rd Order ("DPS Motion").

1. The Palmers had appeared as *pro se* intervenors throughout most of the proceedings including the technical hearings. On October 25, 2013, James A. Dumont Esq., filed a notice of appearance on behalf of the Palmers.

On January 13, 2014, the Town of New Haven also filed a Motion to Alter or Amend the December 23rd Order ("New Haven Motion").

On January 17, 2014, the Board issued an order directing that notice be provided to the landowners affected by the Old Stage Road re-route approved in the December 23rd Order. Specifically, (1) we provided notice enclosing copies of our discussion of the Old Stage Road re-route at pages 57 and 58 of the December 23rd Order; (2) we directed VGS to provide complete copies of the December 23rd Order, VGS's February 2013 petition, and a map of the Old Stage Road re-route plan to the affected landowners; (3) we requested that VGS inform us when those documents have been received by the landowners; and (4) we informed the landowners that we would accept any comments they might have on the re-route plan impact on their properties for thirty days after they have received the materials provided by VGS.

On January 21, 2014, VGS filed a brief in response to the Palmers' and the Department's Motions ("VGS's First Response Brief").

On January 22, 2014, the Town of Monkton filed a brief in response to the Palmers' Motion ("Monkton Response Brief").

On January 24, 2014, the DPS filed a brief in response to the Palmers' and New Haven's Motions ("DPS Response Brief") and VGS filed a brief in response to the New Haven Motion ("VGS's Second Response Brief").

On January 30, 2014, the Town of New Haven replied to both the VGS and DPS responses to its motion ("New Haven Reply Brief").

On February 4, 2014, the Palmers replied to the briefs filed by the Town of Monkton, VGS, and the DPS in response to their motion ("Palmer Reply Brief").

II. The Palmers' Motion

The Palmers have requested that the Board vacate and amend the December 23rd Order pursuant to Vermont Rules of Civil Procedure 52(b), 59(a), and 59(e). The Palmers ask that we amend that Order in four ways, each of which is addressed below.

A. Make the Order Final

The Palmers argue that the Order was not final because the Board determined that additional notice and comment processing was required for landowners affected by the Old Stage Road re-route. Accordingly, the Palmers suggested two remedial alternatives for the Board to consider:

> *(i)* Amend the Order to make it an appealable final judgment by vacating those parts of the order directing Vermont Gas Systems (VGS) to provide notice to residents of Old Stage Road of these proceedings and giving them the opportunity to participate in these proceedings (Order pp. 6-7, 57-58),
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> or
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> *(ii)* Make clear that the Order is not yet an appealable final judgment by stating explicitly that the Board's Order in this matter will not be a final judgment until notice and opportunity to be heard has been granted to Old Stage Road residents and a final judgment order then is issued.[2]

The Palmers argue that "an order is not an appealable final order unless it disposes of all matters before a tribunal and there is nothing left to decide."[3]

VGS responded that the Board's December 23rd Order is a final appealable order containing acceptable post-certification conditions, and it characterizes the provisions related to additional notice and comment on the Old Stage Road re-route as such post-certification conditions.[4] VGS argues that post-certification conditions are routinely used by the Board, and have been approved by the Vermont Supreme Court, which describes the "post-certification procedure" as "an accepted practice of the Board and administrative tribunals generally."[5] VGS highlights the Court's review of the post-certification procedures used by the Board in the

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2. Palmer Motion at 1.

3. *In re Petition No. 152 by Cent. Vy. Ry., Inc.,* 148 Vt. 177, 178, 530 A.2d 579, 580 (1987) ("*Petition No. 152*").

4. VGS's First Response Brief at 3.

5. *In re Vt. Elec. Power Co.,* 131 Vt. 427, 435, 306 A.2d 687, 692 (1973)(citations omitted).

Northwest Reliability Project.[6] In that case, the Board reserved the determination of the final location of a re-route to a post-certification procedure, including notice and comment for the affected landowners.[7] The Court ruled that "this two-step approach for the certification process" does not violate principles of finality.[8] VGS argues that the circumstances here are similar, that there is no error in the Board's final order requiring amendment, and that therefore the Palmers' motion to amend should be denied.[9]

The DPS responded that it concurred with VGS.[10]

In their reply brief, the Palmers agree with VGS's position "that precedent authorizes the Board to approve a general route while reserving difficult aesthetic and environmental considerations for more specific post-certification proceedings." However, they also reiterated the argument that "unless and until that notice and opportunity to be heard has been provided, with a ruling by the Board in response to any submissions by the new parties, the Palmers do not have a final judgment they can appeal to the Supreme Court of Vermont if they choose to do so."[11]

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6. "We have long upheld the Board's authority to approve a general route for a proposed transmission line in a § 248 proceeding, reserving the resolution of difficult aesthetic and environmental considerations underlying the more specific decision to a post-certification procedure." *In re Petitions of Vt. Elec. Power Co. & Green Mountain Power Co. ("Northwest Reliability Project"),* 2006 VT 21, ¶ 21, 179 Vt. 3370, 895 A.2d 226 (citing *In re Vt. Elec. Power Co.,* 131 Vt. at 434-35, 306 A.2d at 691-92).

7. *Northwest Reliability Project,* 2006 VT at ¶ 20-21.

8. *Id.* at ¶ 29.

9. VGS's First Response Brief at 4.

10. DPS Response Brief at 1.

11. Palmer Reply Brief at 2.

Discussion

When we issued the December 23rd Order, we intended for it to be final.[12] That Order was intended to resolve the issues raised in VGS's petition — whether and under what conditions construction of the Project would promote the general good of the state — subject to various post-certification activities mandated by the Order and set out in conditions. We established the route for the proposed pipeline and reached affirmative findings on each of the statutory criteria. This is consistent with the practice that we have employed for other large projects. For example, the post-certification notice and comment process contemplated in the December 23rd Order is similar to the procedure used in the *Northwest Reliability Project* docket that has been affirmed by the Vermont Supreme Court. It is possible that further comments and filings could result in minor changes to the route. That is precisely what the post-certification process is intended to permit, while still enabling the Board to make an affirmative finding on the Section 248 petition and rendering a final judgment. Our conclusion regarding the finality of the Order here does not foreclose our consideration of the remainder of the Palmers' motion or other alterations.

B. Use Eminent Domain Proceedings to Determine the Actual Pipeline Route

The Palmers argue that the Board should only approve the general route of the pipeline in our approval order and should defer the actual final pipeline route decision to later eminent domain proceedings.[13]

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12. *Petition No. 152*, 148 Vt. 177, 178, 530 A.2d 579, 580 (1987). The order in the Transportation Board case cited by the Palmers by its own terms was not meant to be final, unlike the December 23rd Order which was meant to be final. In *Petition No. 152*, the Transportation Board, in the absence of findings as to the issue of maintenance costs for a railroad crossing, ordered the parties to agree on a computation of the annual costs and submit that agreement for Transportation Board approval. Once the order was rendered the parties never agreed on a base annual cost nor did the Transportation Board compute one, and, in its order, the Transportation Board made it clear that the order was not final without the base annual cost. This unique circumstance differs from the procedure to be exercised here in two ways. First, the post-certification review process here is not unique having been used effectively in the *Northwest Reliability Project* docket and in other administrative proceedings. Second, the post-certification review process here has been reviewed by the Vermont Supreme Court and found not to violate the principles of finality. *Northwest Reliability Project,* 2006 VT at ¶ 29.

13. Palmer Motion at 1-2.

VGS responded by arguing that "the Board may approve specific locations under Section 248, and such findings do not preclude landowner challenges to specific routes in later condemnation proceedings."[14] VGS's argument relies upon its analysis of Board practice and the relevant Vermont Supreme Court decisions that reviewed that practice. In *Northwest Reliability Project* the Court highlighted the planning role of the Board's § 248 determination of general or specific routes and rejected the argument that the determination of specific locations should be left solely to future eminent domain proceedings:

> In a related argument, New Haven asserts that, by approving certain specific routes, the Board improperly precluded individual landowners from challenging the necessity of constructing the lines in later condemnation proceedings under 30 V.S.A. §§ 110-112. As we have explained, however, a § 248 certification proceeding "is a planning and policy determining [process] which forecloses no individual rights" and "involves no predetermination of the necessity of condemnation for any particular route." *Auclair v. Vt. Elec. Power Co.*, 133 Vt. 22, 26-27, 329 A.2d 641, 644-45. Accordingly, the claim lacks merit.[15]

The DPS responded that it concurred with VGS's brief. [16]

In their reply brief, the Palmers conclude that VGS "essentially adopts the request for clarification that the Palmers seek."[17]

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14. VGS's First Response Brief at 5.

15. *Northwest Reliability Project* at ¶ 29.

16. DPS Response Brief at 1.

17. Palmer Reply Brief at 2. In their reply brief, the Palmers further assert that if the Board adopts VGS's position it will necessarily "make clear that the argument made by the condemning utility in In re Amended Petition of Vermont Electric Power Co. (Grice), Docket No. 7121 (Order of 7/21/06), has no merit." As noted above, the procedure exercised here relies upon the *Grice* decision and the cases it relied upon including Latchis v. State Highway Board, 120 Vt. 120, 134 A.2d 191 (1957). In *Grice,* the condemning utility made several arguments and the Palmers do not indicate precisely which one is being referred to. We do, however, reiterate our conclusion in *Grice* that "the necessity of a project under 30 V.S.A. § 112 is distinct from the 'need' for a project, an inquiry under 30 V.S.A. § 248(a)." *In re Amended Petition of Vt. Elec. Power Co. (Grice),* Docket 7121, Order of 7/21/06, at 8.

Discussion

Our decision to delineate the specific route in the Rotax Road area, and elsewhere along the Project path, is consistent with our past practice and the precedent cited by VGS. As we noted in the December 23rd Order, the re-route was based on a balancing of facts in a "challenging puzzle involving pieces that include property rights, engineering, land-use, and environmental concerns."[18] The "wide-ranging and in-depth" § 248 factual inquiry in this case (in which the Palmers were active participants) is central to our responsibility in deciding whether to issue a certificate of public good.[19] Our general conclusion that "[t]he re-route cannot satisfy everyone, but overall . . . results in fewer impacts of the Project in this area"[20] is a determination grounded in the planning principles reflected in the § 248 criteria which are both factually and legislatively distinct from the necessity criterion in a 30 V.S.A. § 112 proceeding[21] (which still remains available to the Palmers to obtain the specific siting review sought in the Palmer Motion).[22] In fact, in many instances, it is difficult to render affirmative findings under each of the Section 248 criteria without delineating the route. We therefore reject this argument by the Palmers inasmuch as it is premised on a misunderstanding of the differences between the need criteria of § 248 and the necessity review of § 112.

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18. Order of 12/23/13 at 55.

19. Docket 7121, Order of 7/21/06, at 8.

20. Order of 12/23/13 at 55.

21. *See Vt. Elec. Power Co. v. Bandel,* 135 Vt. 141, 145, 375 A.2d 975, 979 (1977)(noting that Section 248 proceedings "relate only to the issues of public good, not to the interests of private landowners who are or may be involved").

22. The Board's order authorizing the Palmers' intervention specifically placed the Palmers on notice of the availability of condemnation proceedings and foresaw the misunderstanding in their motion citing *Bandel, id.*:

> We emphasize that this Docket is not a condemnation proceeding and, thus, questions about the necessity to condemn a particular property (as distinct from the question of the necessity for the Project overall) or the valuation of any specific property are not within the scope of this Section 248 review. Thus, this proceeding will not address the impact of the proposed Project on individual property values.

Order of 4/12/13 at 8.

C. Alter Findings re Catastrophic Harm

The Palmers argue that the Board should alter its findings and conclusions to "explain why it is necessary to locate the pipeline half the distance it found was needed to avoid catastrophic harm" and instead to "rule that the western side of the Palmers' lands, distant from their home, shall be the location of the pipeline:"[23] The Palmers specifically argue:

> Based on Board Finding 120 (pp. 50-51) that "the area subject to catastrophic harm to both property and person, caused by a catastrophic breach of the transmission pipeline as designed by VGS, is approximately 320 feet," the Board should alter its other, inconsistent, findings and conclusions that it is acceptable for the pipeline to be constructed 160 feet from the Palmer residence (pp. 52-57) and instead order location of the pipeline on the western side of the Palmer lands.[24]

The Palmers further contend that the "present findings and conclusions constitute a nearly complete taking of the fair market value of their lands, without any determination that this is necessary within the meaning of § 112" which can only be corrected if the Board alters "its finding and conclusions to leave for later decision under 30 V.S.A. §§ 110-124 the need for the particular location of the pipeline."[25]

VGS responded that the Palmers' argument presents two problems.[26] First, according to VGS, the Palmers testified that they would not agree to locate the pipeline on the western side of their property because it would interfere with a wetland conserved through a federal easement. Second, VGS contends that the assertion that Finding 120 established a setback is not an accurate characterization of the December 23rd Order which explicitly chose in Findings 282 and 283 not to impose setbacks based upon the impact radius calculation reflected in Finding 120:

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23. Palmer Motion at 5.

24. Palmer Motion at 1.

25. Palmer Motion at 5.

26. VGS's First Response Brief at 7.

> 282. A setback of 300 feet throughout the Project, as recommended by several parties, is not feasible or appropriate. Setbacks are not utilized under the Pipeline Safety Code or implemented in other parts of the country.
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> 283. Pipeline safety is ensured through compliance with design standards and regulations, not setbacks.[27]

Finally, VGS urged that since the Board's findings with regard to the location of the pipeline on the Palmers' property are consistent with Finding 120, and no mistake was made requiring alteration or amendment of the December 23rd Order.[28]

The DPS responded that it concurred with VGS.[29]

In their reply brief, the Palmers acknowledge that the Board "did not adopt a minimum setback" but otherwise reiterate the argument made in the Palmer Motion.[30]

Discussion

Finding 120 was included in the December 23rd Order to provide a factual basis for the Town of Monkton's goal of achieving a 300-foot setback. Finding 120 is not a Board-directed setback; we specifically found that setbacks were neither necessary nor appropriate for use in our Order.[31] We therefore deny the Palmers' request that we alter our decision to reflect their interpretation of Finding 120. As addressed above, the "specificity" of the December 23rd Order does not preclude the Palmers' use of the eminent domain procedures at 30 V.S.A. §§ 110-124 to address whether the "taking" of their property by the pipeline's presence thereon is necessary or represents a "complete taking of the fair market value of their lands."

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27. Order of 12/23/13 at 91.

28. VGS's First Response Brief at 8.

29. DPS Response Brief at 1.

30. Palmer Reply Brief at 2-3.

31. Order of 12/23/13 at 91 (findings 282 and 283) and Discussion at 93.

D. Vacate the Monkton MOU Findings, Conclusions and Order

The Palmers argue that the Board should eliminate any reliance in the Order upon the Memorandum of Understanding between VGS and the Town of Monkton ("Monkton MOU"). [32]

The Palmers provide three reasons why the Monkton MOU should not be relied upon by the Board. First, they argue that the Monkton MOU does not embody a vote of the people of Monkton as reflected in two town articles.[33] Second, the Palmers argue that the findings of the Board do not comport with the Monkton Town Plan.[34] And third, the Palmers argue that in its representations to the Board, the Monkton Selectboard exceeded its authority under Section 248(b)(1).[35]

VGS responded that the Monkton MOU is valid and appropriately incorporated into the Board's Order.[36]

The Town of Monkton responded and requested that the Board deny the Palmers' Motion.[37]

The DPS concurred overall with VGS and the Town of Monkton.[38]

In their reply brief, the Palmers reiterate the arguments made in their motion and add a cite to "Dillon's Rule" as a "'canon of construction requiring that grants of power to municipalities be read as limited to those clearly enumerated.'" [39]

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32. Palmer Motion at 1.

33. Palmer Motion at 6.

34. Palmer Motion at 7.

35. Palmer Motion at 8.

36. VGS's First Response Brief at 8.

37. Monkton Response Brief at 2.

38. DPS Response Brief at 1.

39. Palmer Reply Brief at 5, citing *City of Montpelier v. Barnett*, 2012 VT 32 at ¶ 20, 191 Vt. 441, 452-453, 49 A.3d 120, 129. Dillon's Rule is named after Judge John Foster Dillon who in a 1868 case expressed the theory of state preeminence over local governments that has become a cornerstone of municipal law: "Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control." *Clinton v Cedar Rapids and the Missouri River Railroad*, (24 Iowa 455; 1868).

Town Articles

The Palmers' first argument about the Monkton MOU derives from the following excerpt from the Order: "VGS's Project modifications as documented in the MOU, including the objective of pipeline set back from residential homes and wells by 300 feet, is reflected in town articles passed by the Monkton electorate in a special town meeting format."[40] The Palmers contend that the Monkton MOU is inconsistent with the town articles which did not include a vote on the MOU.[41]

VGS disagreed with this argument pointing out that "the Order simply states that the Project modifications in the MOU (not the MOU itself), including the Town's 300-foot setback objective, are reflected in the Town Articles."[42]

The Town of Monkton refuted the Palmers' argument by noting that:

> The Articles from the 2013 Town Meeting do not prohibit the [S]electboard from entering into the MOU. In fact, the Articles authorized an expenditure of funds for Monkton to retain legal services to defend the Town's interests because of the health, safety and aesthetic impacts of the pipeline. The fruit of such efforts defending the Town's interests are reflected in the MOU. [43]

Discussion

We conclude that our language regarding the town articles at page 12 of the Order requires no alteration or amendment. The language excerpted in the Palmer Motion is a part of a characterization of the Monkton MOU based on the facts in evidence at the time the Order was rendered. It is not a finding of fact. In effect, the Palmers ask that we rely upon new facts not in evidence and make a new finding of fact. We see no need to do so nor do we see any basis under the evidence in the record to do so. Our characterization of the Monkton MOU is not erroneous. Moreover, it was not relied upon as evidence to support a finding and therefore does not materially impact the decision rendered in the December 23rd Order.

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40. Docket 7970, Order of 12/23/13 at 12.

41. Palmer Motion at 6.

42. VGS's First Response Brief at 9.

43. Monkton Response Brief at footnote 1.

At the time we rendered the December 23rd Order, we had heard evidence that the Town of Monkton had several concerns about the proposed pipeline; that these concerns had led the citizens of Monkton through the adoption of town articles to authorize and fund the retention of legal counsel to represent their concerns; that those concerns were generally addressed in the Monkton MOU developed by the Town's legal counsel and approved by the Selectboard; and that the Town of Monkton requested that the Monkton MOU be incorporated into the conditions of any approval of the Project.[44] Our characterization of the MOU at page 12 of the Order is consistent with these facts and therefore does not require amendment or alteration. Rather, following the foregoing review of the record, we remain confident that the December 23rd Order is appropriately conditioned by the Monkton MOU.

The Monkton Town Plan

The second Palmer argument requests that the Board withdraw Finding 116 of the Order which states: "The Monkton Town Plan makes no mention of natural gas lines, but sets forth a goal to locate new distribution or transmission facilities in such a way as to not adversely affect the rural nature of the community and to protect the rural-residential atmosphere of the town."[45] Further, the Palmers ask that the Order be altered to ensure that it otherwise reflects the Town Plan which does not include natural gas distribution or transmission lines but aspires to "curb our dependence on fossil fuel."[46]

VGS responded by insisting that Finding 116 is factually accurate. The Company further contends that the Palmers' argument linking the fossil fuel aspiration with the fact that there are no natural gas transmission lines in the Plan does not add up to a prohibition of natural gas distribution lines.[47]

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44. Tr. 9/17/13 at 40-43 (Pilcher).

45. Docket 7970, Order of 12/23/13 at 50.

46. Palmer Motion at 7.

47. VGS's First Response Brief at 9.

The Town of Monkton also responded to this argument concluding that, rather than prohibiting natural gas transmission lines, the "more reasonable inference is that the Town Plan permits natural gas distribution networks."[48]

The DPS concurred with VGS and the Town of Monkton.[49]

Discussion

We decline to modify the Order as the Palmers request. There is no evidence that the Monkton Town Plan prohibits natural gas transmission lines. The Town Plan does contain the transmission line guidance in Finding 116 and also aspires to reduce dependence on fossil fuels. This evidence leads to two reasonable inferences rather than the Palmers' single additive conclusion. The first reasonable inference is that, if natural gas transmission pipelines were to be placed in Monkton like the existing electrical transmission lines, they should be installed in a way that "protects the rural-residential atmosphere of the town." The second reasonable inference is that, inasmuch as natural gas is more efficient than fuel oil and propane, the pipeline would not be inconsistent with the Town's reduced fossil fuel aspiration since it could be projected to lead to lower consumption of fossil fuels. For these reasons, we will not alter or amend the Order to reflect the Palmers' reading of the Town Plan.

Selectboard Authority Under § 248(b)(1)

Finally, the Palmers argue that the Board should not rely on the Monkton MOU because it exceeds the authority of the Selectboard to make recommendations to the Board pursuant to 30 V.S.A. § 248(b)(1). Thus, the Palmers request that the Board vacate its findings and conclusions as to § 248(b)(1) and vacate ¶ 4 of its Order and deny the CPG because VGS failed to meet its burden of proof as to this criterion.[50]

48. Monkton Response Brief at 2.

49. DPS Response Brief at 1.

50. Palmer Motion at 8.

Section 248(b)(1) states that the Board should not issue a CPG for an in-state facility if it will unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal legislative bodies. The Palmers argue that the Monkton MOU is a contract between the Monkton Selectboard and VGS that was concluded by the Selectboard without authority.[51]

The Town of Monkton responded that the Monkton Selectboard had the requisite authority to enter into an MOU and that:

> § 248(b)(1) expressly contemplates that the Town, through its legislative body, the Selectboard, be involved in these proceedings. The Palmers cite no authority that prohibits a party from entering [in]to the MOU or settlement agreement reflecting the Town's effort to address municipal concerns arising from the potential construction of the pipeline.[52]

VGS responded similarly to this Palmer argument by urging that no mistake was made and that the Board's Order referencing the MOU should not be amended. VGS emphasized that "the valid MOU between the Town of Monkton and Vermont Gas reflected the concerns of the Town and the agreements reached between Monkton and Vermont Gas."[53]

The DPS concurred with the Town of Monkton and VGS.[54]

In their reply brief, the Palmers add that the Town of Monkton's argument that it had the authority to enter into the MOU ignores the municipality's limited authority as expressed in Dillon's Rule.[55]

Discussion

We are not persuaded by the Palmers' argument that the Board should not rely on the Monkton MOU because it exceeds the authority of the Selectboard to make recommendations to

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51. *Id*.

52. Monkton Response Brief at 2.

53. VGS's First Response Brief at 10.

54. DPS Response Brief at 1.

55. Palmer Reply Brief at 5.

the Board pursuant to 30 V.S.A. § 248(b)(1). It is a lawful and integral part of Board practice to afford due consideration to the recommendations of town selectboards in making § 248(b)(1) criterion determinations. Agreements developed by municipalities and signed by selectboard representatives are a regular part of proceedings before the Public Service Board; in this docket there are two MOUs in the record that were negotiated by counsel, executed by municipalities, and recommended as a basis for conditions of our approval of the petition. There are also six other MOUs in the record of this docket binding VGS to conform the Project to the interests of other private and public entities. This MOU negotiation process is necessary for the effective and efficient advocacy of municipalities' and other parties' concerns about projects before the Board. The Palmers provide no legal or policy basis to disturb this process. We therefore reject this argument and find that the Monkton Selectboard's recommendation that the Board incorporate the Monkton MOU into the December 23rd Order was one indicia of whether the Project was consistent with 30 V.S.A. § 248(b)(1).

In conclusion, we have not been persuaded by any of the arguments made by the Palmers for vacating the December 23rd Order, re-opening the matter, amending and including new findings of fact, and issuing an amended judgment. Therefore, the Palmer Motion is denied.

III. DPS Motion

The DPS requests that we alter or amend our December 23rd Order by making additional specific findings of fact amplifying Finding 82 to more completely reflect 30 V.S.A. § 248(b)(1)'s requirement that natural gas transmission lines be "in conformance" with any applicable regional plan. The DPS argues that this amplification could be made without upsetting the Board's approval of the petition and without re-opening the case since sufficient evidence already exists in the record to support this finding.[56] VGS responds that it did not object to the DPS's Motion.[57] No other responses to the DPS Motion were received.

56. DPS Motion at 1.

57. VGS's First Response Brief at 1.

Discussion

We hereby grant the DPS Motion to revise Finding 82 to more fully address 30 V.S.A. § 248(b)(1).[58]

Accordingly, the language of Finding 82 of the December 23rd Order is hereby amended (in bold typescript here) to read as follows:

> 82. The Project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. **In addition, the proposed natural gas transmission line will be consistent with applicable provisions concerning such lines contained in the duly adopted regional plan.** This finding is supported by findings 83 through 183, below.

Further, we hereby modify our Discussion of Section 248(b)(1) at page 64 of the Order to further address the statutory language by amending the first paragraph of that Discussion (in bold typescript here) to read as follows:

> Section 248(b)(1) provides in pertinent part that, before the Board may issue a certificate of public good for an in-state facility, the Board shall find that the facility "will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality." 30 V.S.A. § 248(b)(1). **Additionally, for a natural gas transmission pipeline subject to Board review, § 248(b)(1) requires the Board to find the line to be in conformance with any applicable provisions in the duly adopted regional plan.**

IV. New Haven Motion

The Town of New Haven has moved that the December 23rd Order be amended and altered to more clearly and consistently set the noise level standards to be observed by VGS at the New Haven Gate station.

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58. *See also Petition of Vermont Gas Systems, Inc.,* Docket 7929, Order of 5/31/13, at 5.

> Specifically, the Town of New Haven does hereby request that the noise standards set, including decibel levels and location of testing, as stated on page 95 paragraph #296 of the order, page 96 (discussion) of the order, page 147 paragraph #9 of the order, and Condition #8 of the CPG, be amended or altered to be consistent with testimony submitted by Vermont Gas and by the Department of Public Service, and agreed to by brief of the Town of New Haven, that the decibel levels would not exceed 45 dBA nighttime and 55 dBA daytime measured at the fenceline of the New Haven gate station.[59]

The Town of New Haven further requests that references to decibel levels be clarified to uniformly using dBA (vice dB) measurements throughout the Order. In its motion, the Town of New Haven also requested that "the judgment in this matter be vacated, that this matter be reopened, that amended and new findings of fact and conclusions of law be adopted, and that an amended judgment order be issued."[60]

VGS agreed in part with the relief sought in the New Haven Motion. VGS agrees that the Order should reflect the testimony of VGS and DPS witnesses, but disagrees that the testimony proposed a 45 dBA/55 dBA noise limit at the fenceline of the New Haven gate station or at the nearest occupied structure. Rather, the Company asserts that the expert testimony proposed a 50 dBA limit at the gate station fence.[61] VGS also disagrees that the Order should be vacated and the proceedings re-opened to make the corrections sought by the Town of New Haven.

The DPS recommended that the Board "grant that portion of New Haven's Motion seeking clarification of the record consistent with the recommendations of Vermont Gas in its response to New Haven"[62] but concurs with VGS that there was sufficient evidence in the record to make the corrections sought by New Haven without vacating the Order and re-opening the proceedings.

In its reply brief, the Town of New Haven requests that the Board set a noise standard of 50 dBA at the gate station fenceline and concurs with VGS and the DPS that this could be done

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59. New Haven Motion at 1-2.

60. New Haven Motion at 1.

61. VGS's Second Response Brief at 2.

62. DPS's Response Brief at 2.

without vacating the Board's December 23rd Order and without the requirement of a new hearing on the merits.[63]

Discussion

We grant the New Haven Motion in part, consistent with the New Haven Reply Brief, and hereby make four amendments to our Findings and Discussion in the Order and to the CPG to ensure their clarity and their consistency with the noise level testing requirement of 50 dBA at the gate station fenceline.

(1) Finding 296 shall be amended (in bold typescript and strikeout here) as follows:

> 296. There will be sound associated with the gate station sites in New Haven, Middlebury and Williston. Post-construction noise monitoring at these gate station sites will document the noise generated at those locations and provide some basis for determining whether additional mitigation is required. Testing should be conducted at the sites to ensure that the noise levels do not exceed ~~55 dBA in the daytime or 45 dBA at night~~ **50 dBA**, as measured at the ~~exterior of the closest occupied structure~~ **gate station fenceline**.

(2) The second sentence of the final paragraph of the Discussion thereafter at page 96 shall be altered for consistency (in bold typescript and strikeout) as follows:

> Testing must be conducted at the sites, before and after construction, to ensure that the noise levels do not exceed **50 dBA**~~55 dB in the daytime or 45 dB at night~~, as measured ~~outside the closest occupied structure.~~ **at the gate station fenceline.**

(3) At page 147 paragraph #9 of the Order shall be altered (in bold typescript and strikeout) as follows:

> 9. VGS shall conduct post-construction noise level monitoring at the gate stations. Testing at the sites shall ensure that the noise levels do not exceed ~~55 dBA in the daytime or 45 dBA at night~~ **50 dBA**, as measured at the gate station fenceline. ~~If test results should exceed these levels, follow-on testing shall occur at the nearest residence.~~ Test results shall be reported to the Vermont Department of Public Service ("Department") which shall develop any mitigation steps in consultation with VGS, and, if necessary, with the Board.

63. New Haven Reply Brief at 1-2.

(4) And finally, Condition #8 of the CPG shall be altered (in bold typescript and strikeout) as follows:

> 8. VGS shall conduct post-construction noise level monitoring at the gate stations. Testing at the sites shall ensure that the noise levels do not exceed ~~55 dBA in the daytime or 45 dBA at night~~ **50 dBA**, as measured at the gate station fenceline. ~~If test results should exceed these levels, follow-on testing shall occur at the nearest residence.~~ Test results shall be reported to the Vermont Department of Public Service ("Department") which shall develop any mitigation steps in consultation with VGS, and if necessary, with the Board.

V. Conclusion

The Board concludes that:

1. The motion made by Nathan and Jane Palmer to vacate, alter and amend this docket's December 23rd Order is denied.

2. The motion made by the Department of Public Service to alter and amend this docket's December 23rd Order is granted and the December 23rd Order is altered and amended as described herein.

3. The motion made by the Town of New Haven to vacate, alter and amend this docket's December 23rd Order is denied as to vacating the Order but is otherwise granted and the December 23rd Order and Certificate of Public Good are altered and amended as described herein.

SO ORDERED.

Dated at Montpelier, Vermont, this 10th day of March, 2014.

s/ James Volz	)	
	)	PUBLIC SERVICE
	)	
s/ David C. Coen	)	BOARD
	)	
	)	OF VERMONT
s/ John D. Burke	)	

OFFICE OF THE CLERK

FILED: March 10, 2014

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and Order.