

# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 10-159

May 2, 2011

Petition of Sheffield Water Company, pursuant to G.L. c. 40A, § 3, for exemption by the Department of Public Utilities from certain zoning bylaws of the Town of Sheffield, MA for the purpose of constructing a water storage tank

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FOR: Sheffield Water Company  
Petitioner

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FOR: Paul Greene  
Intervenor

## I. INTRODUCTION

Pursuant to G.L. c. 165, § 1, Sheffield Water Company (“Sheffield” or “Company”) is a water company subject to regulation by the Department of Public Utilities (“Department”).

In the Company’s most recent rate case, the Department approved a settlement agreement pursuant to which Sheffield would purchase and construct a new water storage tank “with all due speed.” Sheffield Water Company, D.P.U. 09-142, at 3 (2010). The Company proposed to construct the new 250,000 gallon water storage tank on a two acre parcel of land owned by the Company on Water Farm Road in Sheffield, MA. The construction of the water tank is required by the Massachusetts Department of Environmental Protection (“DEP”) as a result of the decommissioning of a 30,000 gallon reservoir after total coliform source contamination.

Id. The Department also approved financing for the water storage tank in Sheffield Water Company, D.P.U. 09-143 (2010) (“Sheffield Water”). The Department’s approval of the long-term financing arrangement was conditioned on completion of the water tank construction by the end of 2011. Id. at 13.

On November 12, 2010, the Company filed with the Department a Petition for Exemption from the Zoning Bylaws of the Town of Sheffield, Massachusetts, pursuant to G.L. c. 40A, § 3, so that the new water tank could be built as proposed (“Petition”). The Company seeks exemption from the following sections of the Town’s Zoning Bylaws: (i) Section 3.1.3.C.6, which requires a Special Permit by the Planning Board to construct a Public Utility Facility in a rural zoning district; (ii) Section 4.2.1, which requires a variance to construct a structure greater than 35 feet in height in the Town of Sheffield; and (iii) Section 5.2, which

requires a Special Permit from the Zoning Board of Appeals for reconstruction, extension or structural change of a nonconforming structure in a substantially different manner or to a substantially greater extent.

The Town granted the required variances and special permits in September 2010. However, Paul Greene, who owns property directly across the road from the site proposed for the new tank, appealed the Zoning Board of Appeals decision to the District Court, Southern Berkshire Division, on September 23, 2010. As a result, the Company filed the Petition in this case. The Department's granting of this Petition will moot Mr. Green's District Court appeal.

## II. PROCEDURAL HISTORY

On January 5, 2011, the Department conducted a public comment hearing in Sheffield, MA concerning the proposed exemption from the Sheffield Zoning Bylaws. Mr. Greene filed a timely petition to intervene, which was granted on January 13, 2011. Mr. Greene and Department staff issued two sets of discovery and the case was scheduled to be heard in Boston on April 13, 2011. On April 13, 2011, the Company and Mr. Greene filed a Joint Motion for Approval of Settlement and Release Agreement seeking to resolve all issues in the case.

## III. THE SETTLEMENT AGREEMENT

The Settlement Agreement states that the Company and Mr. Greene have reached agreement on all issues in the case. According to the Settlement Agreement, the Company will locate the 250,000 gallon water storage tank 225 feet from Water Farm Road, which is farther from the road than the location originally planned (Settlement at 2). The Company agrees to plant twelve eastern pines, eight to ten feet tall, along Water Farm Road to provide a visual

buffer, and to paint the water storage tank forest green (id.). In return, Mr. Greene assents to the Department's grant of exemptions from Sheffield Zoning Bylaws, Sections 3.1.3.C.6; 4.2.1; and 5.2 (id.). Mr. Greene also agrees to withdraw his zoning appeal filed with the Southern Berkshire District Court upon Department approval of the Settlement Agreement.<sup>1</sup>

By letter dated April 13, 2011, the Sheffield Board of Selectmen reported to the Department that the Selectmen had voted unanimously to approve and support the Settlement Agreement and to request Department approval of the Joint Motion for Approval of the Settlement Agreement, "which will allow this important project to proceed."

#### IV. STANDARD OF REVIEW

General Laws c. 40A, § 3, authorizes the Department to grant to public service corporations exemptions from local zoning ordinances or bylaws when the proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public.

In assessing the reasonableness of an offer of settlement, the Department reviews the entire record as presented in a company's filing and other record evidence to ensure that the settlement is consistent with applicable law, Department precedent, and the public interest.

Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 04-114/03-118, at 6 (2005), citing Boston Edison Company, D.P.U./D.T.E. 96-23, at 13 (1998);

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<sup>1</sup> The Company was not able simply to withdraw its Petition because the Settlement Agreement changes the location of the proposed water storage tank. A change in the location of the tank would require new special permits and variances from the Town of Sheffield, a process which would cause further delay and potential appellate review.

Berkshire Gas Company, D.P.U. 96-92, at 8 (1996); Boston Gas Company, D.P.U. 96-50, at 7 (Phase I) (1996).

V. ANALYSIS AND FINDINGS

The Company currently serves approximately 480 water customers in Sheffield, MA with domestic water and provides fire protection to the Town of Sheffield (Petition at 2). As a water company, pursuant to G.L. c. 165, § 1, Sheffield qualifies as a public service corporation which is eligible to petition the Department for an exemption from local zoning bylaws, pursuant to G.L. c. 40A, § 3.

The Company has demonstrated that the proposed water storage tank, which will be built 225 feet from Water Farm Road in Sheffield, MA, will provide a reliable source of potable water and fire protection for the Company's 480 customers (Petition at 3). Its construction also will satisfy the requirements of both the Massachusetts DEP and DPU to address earlier issues with coliform source contamination (Petition at 2). Furthermore, the tank should be installed as expeditiously as possible, both to provide reliable service to the public and to satisfy our conditions authorizing the financing of the storage tank. Sheffield Water at 10 (2010). Accordingly, upon consideration of the record in this proceeding, the Department finds that the proposed water storage tank is reasonably necessary for the convenience or welfare of the public and requires an exemption from the Sheffield Zoning Bylaws.

The Department has conducted a full review of the record compiled in this case, including the Petition and numerous discovery responses. We have evaluated the proposed

Settlement Agreement in light of the record evidence and the oral comments presented by interested persons at the public comment hearing. Based on this review, the Department finds that the Settlement Agreement has provided a valuable means for the Company to reach an accommodation with Mr. Greene concerning mitigation of the visual impacts on Mr. Greene's property arising from the proposed water storage tank. The Settlement Agreement also will allow the Company to construct the needed water storage tank without further delay (Petition at 2). The Sheffield Board of Selectmen voted unanimously to approve and support the Settlement Agreement and to request its approval by the Department (Letter from Selectmen, dated April 13, 2011). Accordingly, the Department finds that, on balance, the Settlement Agreement represents a reasonable resolution of the issues in this proceeding, is consistent with applicable law, Department precedent, and is in the public interest. Therefore, after review and consideration, it is

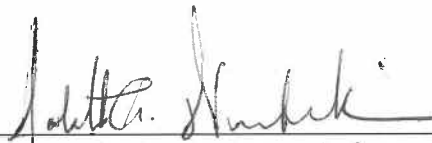
ORDERED: That the Joint Motion for Approval of Settlement and Release Agreement, submitted by Sheffield Water Company and Paul Greene on April 13, 2011, is ALLOWED and the Settlement Agreement is APPROVED; and it is

FURTHER ORDERED: That Sheffield Water Company is exempt from Sheffield Zoning Bylaws, Section 3.1.3.C.6; Section 4.2.1; and Section 5.2 for the purpose of constructing the water storage tank described by this Order.

By Order of the Department,



Ann G. Berwick, Chairman



Jolette A. Westbrook, Commissioner