



Delaware Auditor of Accounts
GASB Entity Determination Analysis Memo
Sustainable Energy Utility
June 30, 2015

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Blended Component Unit

Governmental Accounting Standards Board (GASB) Statements No. 14, 34, and 61 establish standards for defining and reporting on a government's reporting entity. Management is responsible for determining the reporting entity while preparing the government's financial statements. AOA performed the analysis below to assess the State's reporting entity for audit purposes.

To complete our entity determination analysis, AOA reviewed the following:

- GASB 14, *The Financial Reporting Entity*
- GASB 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments* (GASB 34 amended GASB 14, ¶9, 11, ¶12, ¶19, ¶42, ¶44, ¶50 – ¶52, ¶54, ¶58, ¶60, ¶63, ¶65, ¶73, ¶74, ¶78, and ¶131 and superseded GASB 14, ¶45–47, 49, 56, and ¶57)
- GASB 39, *Determining Whether Certain Organizations Are Component Units*
- GASB 61, *The Financial Reporting Entity: Omnibus an amendment of GASB Statements No. 14 and No. 34*
- *AICPA Audit and Accounting Guide – State and Local Governments*, Chapter 3: The Financial Reporting Entity
- *GASB 2011-2012 Comprehensive Implementation Guide*, Chapter 4: The Financial Reporting Entity
- *29 Del. C. c 80, Subchapter II - Department of Natural Resources and Environmental Control – The Delaware Energy Act*
- *Sustainable Energy Utility (SEU) Financial Statements*, December 31, 2014 and 2013
- *June 30, 2014 State of Delaware Comprehensive Annual Financial Report (CAFR)*
- *SEU Bylaws*
- *SEU Articles of Incorporation*
- *SEU Certificate of Amendment*
- *Legal opinion re: Authority of SEU Oversight Board*, dated May 2, 2008
- *Internal Revenue Service Determination Letter*, dated June 25, 2009, for SEU, Inc.

1. The PCU is legally separate. (¶ 15)¹

According to GASB, an organization has separate legal standing if it is created as a body corporate or a body corporate and politic, or if it otherwise possesses the corporate powers that would distinguish it as being legally separate from the primary government. Generally, corporate powers give an organization the capacity to have a name; the right to sue and be sued in its own name without recourse to a state or local governmental unit; and the right to buy, sell, lease, and mortgage property in its own name. The corporate powers granted to a separate organization are enumerated in its corporate charter or in the legislation authorizing its creation. A special purpose government (or any other organization) that is *not* legally separate should be considered, for financial reporting purposes, part of the primary government that holds the corporate powers.

¹ Paragraph references are from GASB 14, as amended by GASB 61.



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Application to SEU

The SEU is legally separate from the State of Delaware as it is a corporation organized and existing under the laws of the State of Delaware (29 Del. C. §8059 (b) and (c) and Article I of the SEU Articles of Incorporation). It is also operated as an exempt organization under section 501(c)(3) of the Internal Revenue Code (Article I and III of the SEU Articles of Incorporation). The SEU Oversight Board shall have all powers conferred by law to manage the corporation and its activities (Article VII of the SEU Articles of Incorporation). The Board of Directors, to the extent permitted by Delaware Law and except as otherwise provided in these Bylaws, may authorize any director or agent to enter into any contract or execute any instrument in the name of and on behalf of the Corporation (Section 6.2 of the SEU Bylaws). Although the authorizing legislation does not specifically address the SEU's right to buy, sell, lease, and mortgage property in its own name, these rights are implied in the rights of a corporation.

Code Excerpts are as follows:

29 Del. C. §8059. Sustainable Energy Utility.

- (b) Intent of legislation. -- The General Assembly finds that there remain in Delaware significant, cost-effective opportunities to acquire end-user energy efficiency savings that can lower customers' bills and reduce the environmental impacts of energy production, delivery, and use. Delaware has an opportunity to create new markets for customer-sited renewable energy generation that will help build jobs in Delaware, improve our national security, keep value within the local economy, improve energy reliability, and protect Delawareans from the damaging effects of recurrent energy price spikes.
- (c) Sustainable Energy Utility administrative organization. --
 - (1) This section creates the "Sustainable Energy Utility" ("SEU"). The SEU shall design and deliver comprehensive end-user energy efficiency and customer-sited renewable energy services to Delaware's households and businesses. The SEU shall be unaffiliated with any of the State's electric or gas utilities, public or private.
 - (2) Routine administration of the SEU shall be managed by an executive director selected by the Board through an open and competitive selection process.

Per the Certificate of Incorporation of SEU, Inc.:

FIRST: The name of the corporation is Sustainable Energy Utility, Inc.

SEVENTH: This corporation shall have no members. Except as otherwise provided by law or in the bylaws, the corporation shall be governed by the SEU Oversight Board, whose directors shall be appointed as required by Delaware law. The SEU Oversight Board shall have, subject to the limitations set forth in this Certificate and Delaware Law, all powers conferred by law to manage the corporation and its activities, including, without limitation, the power to adopt, amend, modify and repeal bylaws for the governance of the corporation, except as limited in the bylaws.



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Per the Certificate of Amendment for SEU, Inc.:

Replace current paragraph THIRD with:

THIRD: This corporation is organized and shall be operated exclusively for charitable, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code. This corporation is formed for the benefit of, and to carry out the purposes of, the State of Delaware in developing, coordinating, and promoting the sustainable use of energy in Delaware and thereby “lessening of the burdens of Government” within the meaning of Section 1.501(c)(3)-1(d)(2) of the Treasury Regulations.

Per the Bylaws of the Sustainable Energy Utility, Inc.:

ARTICLE VI GENERAL MATTERS

6.2 Execution of Corporate Contracts and Instruments.

The Board of Directors, to the extent permitted by Delaware Law and except as otherwise provided in these Bylaws, may authorize any director or agent to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an agent, no agent shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

3. *The PG appoints the majority of the PCU’s board. (§22-24)*

According to GASB, if a primary government appoints a simple majority of the organization’s governing board, it usually has a voting majority. However, if financial decisions require the approval of more than a simple majority, the primary government is not accountable for the organization.

For purposes of determining whether accountability exists, a primary government’s appointment authority should be substantive. In some cases the appointment authority of a primary government’s officials may be limited by a nomination process. For example, state statutes or local ordinances may require a primary government to select its appointees from a slate of candidates provided by one or more individuals or groups other than the primary government’s officials or appointees. A primary government’s appointment authority is not substantive if the number of candidates is severely limited by the nominating process, for example, if a primary government must select three appointees from a single slate of five candidates. Additionally, a primary government’s appointment authority may not be substantive if its responsibility is limited to confirming appointments made by individuals or groups other than the primary government’s officials or appointees.



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In most instances, legal provisions for appointment of an organization's officials also provide for continuing appointment authority. However, in the absence of continuing appointment authority, the ability of a primary government to unilaterally abolish an organization also provides the basis for ongoing accountability. Thus, a primary government that creates an organization (creation is tantamount to the initial appointment of the governing body) is accountable for the organization if the primary government can unilaterally abolish it. A primary government is considered to be accountable for an organization as long as continuing appointments are made by the primary government, even if those appointments are made by a subsequent administration.

Application to SEU

The SEU Oversight Board consists of 11 members, 7 of which shall be appointed by and serve at the pleasure of the Governor (29 Del. C. §8059 (d)). Further, the Secretary of the Department of Natural Resources and Environmental Control and the Public Advocate are both positions appointed by the Governor (29 Del. C. §8002 (a) and 29 Del. C. §8716 (a), respectively).

Code Excerpts are as follows:

29 Del. C. §8059. Sustainable Energy Utility.

(d) SEU Oversight Board. –

- (1) a. The business and affairs of the SEU shall be managed by or under the direction of the SEU Oversight Board. The SEU Oversight Board shall consist of 11 members and shall include the Secretary of the Department of Natural Resources and Environmental Control ("DNREC") or the Secretary's designee, and the Public Advocate or the Public Advocate's designee. The Board shall include representation from each county. Seven members of the SEU Oversight Board shall be appointed by and serve at the pleasure of the Governor, and may include, but not be limited to, representatives from the nonprofit environmental community, the nonprofit energy community, the nonprofit community servicing the low and moderate income community, the financing/accounting community, business, labor, and education. One member of the SEU Oversight Board shall be appointed by and serve at the pleasure of the President Pro Tempore, and 1 member shall be appointed by and serve at the pleasure of the Speaker of the House. The Board shall elect 1 of its members to serve as a chairperson by a majority vote. The Director of the Division of Energy and Climate of DNREC, or the Director's designee, shall serve on the Board in an ex officio nonvoting capacity. The terms of the board members shall typically be 4 years, and shall be staggered. The Governor may appoint members for terms of less than 4 years to ensure that the terms are staggered. The Governor may, at any time, remove any gubernatorial appointee to the SEU Oversight Board for gross inefficiency, malfeasance, misfeasance or nonfeasance, in office. A gubernatorial appointee may be deemed to have resigned their position if they are absent from 3 consecutive board meetings without good cause.



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- b. The SEU Oversight Board shall be governed by and subject to the Delaware Freedom of Information Act (Chapter 100 of this title).
- c. The SEU Oversight Board shall include a provision in its bylaws pertaining to conflicts of interest and Board members shall be required to sign conflict of interest statements.

29 Del. C. §8002 Secretary; division directors; Acting Secretary; appointment.

- (a) The administrator and head of the Department shall be the Secretary of the Department of Natural Resources and Environmental Control, who shall be a person qualified by training and experience to perform the duties of the office. The Secretary shall be appointed by the Governor, with the advice and consent of the Senate and shall serve at the pleasure of the Governor. The Secretary shall be paid an annual salary not in excess of \$34,000. The Secretary of the Department of Natural Resources and Environmental Control shall become a bona fide resident of the State within 6 months after his or her appointment; provided, however, that upon good cause shown, the Governor may grant an additional extension of 6 months. After becoming a resident of the State, the Secretary shall continuously be a resident of the State as long as he or she retains the office. Failure to obtain or retain such residency shall be an automatic resignation from said office.

29 Del. C. § 8716 Division of the Public Advocate.

- (a) There is established within the Department of State the Division of the Public Advocate. The Public Advocate shall be a person qualified by training and/or experience to perform the duties of the office. Beginning in the 149th General Assembly, the Public Advocate shall be appointed by the Governor with the advice and consent of the majority of the Senate to serve a term of 4 years at the pleasure of the Governor. The Public Advocate shall be a full-time employee of the State.

6. *There is a financial benefit/burden relationship. (§ 27-33) The PG is able to impose its will on the PCU. (§25-26)*

Financial Benefit to or Burden on a Primary Government

According to GASB, *an organization can provide a financial benefit to, or impose a financial burden on, a primary government in a variety of ways.* The benefit or burden may result from legal entitlements or obligations, or it may be less formalized and exist because of decisions made by the primary government or agreements between the primary government and a component unit. If a primary government appoints a voting majority of an organization's officials or if the organization is fiscally dependent on the primary government *and* there is a potential for those organizations either to provide specific financial benefits to, or to impose specific financial burdens on, the primary government, the primary government is financially accountable for those organizations. An organization has a financial benefit or burden relationship with the primary government if, for example, *any one* of these conditions exists:



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- a. The primary government is legally entitled to or can otherwise access the organization's resources.
- b. The primary government is legally obligated or has otherwise assumed the obligation to finance the deficits of, or provide financial support to, the organization.
- c. The primary government is obligated in some manner for the debt of the organization.

Exchange transactions between organizations and the primary government should not be considered manifestations of a financial benefit or burden relationship. In an exchange transaction, such as a purchase or sale of goods or services, each participant (the government or its employees rather than the citizenry) directly receives and sacrifices value. For example, funding by a primary government for higher education is not equivalent to purchasing educational services and would be considered a manifestation of a financial burden on the primary government.

The effect of the financial benefits or burdens on the primary government can be either direct or indirect. A direct financial benefit or burden occurs when the primary government itself is entitled to the resources or is obligated for the deficits or debts of the organization. An indirect benefit or burden exists if one or more of the primary government's component units is entitled to the resources or is obligated for the deficits or debts of the organization. For purposes of this Statement, a financial benefit or burden relationship exists if the primary government is either directly or indirectly entitled to the resources or is either directly or indirectly obligated for the deficits or debts of an organization.

Legally Entitled to or Can Otherwise Access the Organization's Resources. The ability to access the resources of an organization—not necessarily whether there was an actual transaction during the period—is the important factor for determining when a primary government is entitled to an organization's resources. However, the ability to access the resources of an organization should be judged in light of the organization as a going concern; that is, a residual interest in the net assets of an organization in the event of dissolution is not equivalent to being entitled to its resources. If a primary government appoints a voting majority of an organization's officials *and* is legally entitled to or can otherwise access the organization's resources, the primary government is financially accountable for that organization.

Resources may flow from a component unit to a primary government for several reasons. Some organizations may operate activities, such as off-track betting or lotteries, for the principal purpose of generating net revenues that are accessible to the primary government. These organizations provide financial benefits to the primary government. Other organizations may operate activities (for example, public utilities) for the purpose of providing basic public services and charge rates sufficiently high to also provide a financial benefit to the primary government. These benefits may be characterized as "payments in lieu of taxes" or "contributions," or they may simply be amounts remitted on request of the primary government. These organizations also provide financial benefits to the primary government.

Legally Obligated or Has Otherwise Assumed the Obligation to Finance the Deficits of, or Provide Financial Support to, the Organization. A primary government may be obligated to finance the deficits of, or provide financial support to, an organization in different ways. It could be legally obligated to do so, or it may choose to do so for a variety of reasons. If a primary government appoints a voting majority



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of an organization's officials *and* is legally obligated or has otherwise assumed the obligation to finance the deficits of, or provide financial support to, that organization, the primary government is financially accountable for that organization. The following are examples of financial burdens assumed by a primary government in support of certain organizations:

- a. Some organizations provide public services financed by user charges that are not expected to be sufficient to sustain their operations. This situation often results from providing services such as mass transit, higher education, and healthcare. In these cases, public policy may dictate that a state or local government provide financial support to the organization to increase the availability and affordability of the service to a broader segment of the citizenry. Examples of support include annual appropriations to help meet operating expenditures/expenses, periodic capital grants, and direct payment of capital expenditures or debt service.
- b. A primary government may assume an obligation to finance the deficits of an organization. These deficits may or may not be expected to recur annually. A financial burden exists if the primary government is obligated to finance an organization's deficits even though there has not been, and may never be, a deficit to subsidize.

Some organizations' operations are fully or partially funded by revenues generated through tax increment financing. Legally separate development or redevelopment authorities sometimes receive the incremental taxes that result from a tax increment financing arrangement. When this is done, *a taxing government temporarily waives its right to receive the incremental taxes from its own levy*. The incremental taxes instead are remitted to the separate organization. For purposes of this Statement, this type of tax increment financing should be considered evidence of an obligation to provide financial support to an organization (a financial burden), regardless of whether the primary government collects the taxes and remits them to the organization or the incremental taxes are paid directly to the organization.

Obligated in Some Manner for the Debt of an Organization. An obligation for the debt of an organization is similar to the notion that a primary government may be obligated for future operating deficits. The obligation can be either expressed or implied. A primary government is obligated in some manner for the debt of an organization if (a) it is legally obligated to assume all or part of the debt in the event of default or (b) it *may* take certain actions to assume secondary liability for all or part of the debt, *and* the government takes, or has given indications that it will take, those actions. Conditions that indicate that a primary government is obligated in some manner include:

- a. The primary government is *legally obligated* to honor deficiencies to the extent that proceeds from other default remedies are insufficient.
- b. The primary government is *required* to temporarily cover deficiencies with its own resources until funds from the primary repayment source or other default remedies are available.
- c. The primary government is *required* to provide funding for reserves maintained by the debtor organization, or to establish its own reserve or guarantee fund for the debt.
- d. The primary government is *authorized* to provide funding for reserves maintained by the debtor organization or to establish its own reserve or guarantee fund *and* the primary government



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establishes such a fund. (If a fund is not established, the considerations in subparagraphs f and g may nevertheless provide evidence that the primary government is obligated in some manner.)

- e. The primary government is *authorized* to provide financing for a fund maintained by the debtor organization for the purpose of purchasing or redeeming the organization's debt, or to establish a similar fund of its own, *and* the primary government *establishes* such a fund. (If a fund is not established, the considerations in subparagraphs f and g may nevertheless provide evidence that the primary government is obligated in some manner.)
- f. The debtor government explicitly indicates by contract, such as the bond agreement or offering statement, that in the event of default the primary government *may* cover deficiencies although it has no legal obligation to do so. That is, the bond offering statement may specifically refer to a law that authorizes the primary government to include an appropriation in its budget to provide funds, if necessary, to honor the debt of the organization.
- g. Legal decisions within the state or previous actions by the primary government related to actual or potential defaults on another organization's debt make it *probable* that the primary government will assume responsibility for the debt in the event of default.

If a primary government appoints a voting majority of an organization's officials *and* is obligated in some manner for the debt of that organization, the primary government is financially accountable for that organization.

Imposition of Will

A primary government that is accountable for an organization because it appoints a voting majority of that organization's governing body frequently has the ability to affect that organization's operations. Sometimes, however, based on the provisions of law or contract, the primary government has little influence over the organization's operations. Certain conditions indicate the primary government's ability to affect the day-to-day operations of an organization. These conditions are referred to in this Statement as a government's ability to impose its will on an organization. If a primary government appoints a voting majority of an organization's officials *and* has the ability to impose its will on the organization, the primary government is financially accountable for that organization.

A primary government has the ability to impose its will on an organization if it can significantly influence the programs, projects, activities, or level of services performed or provided by the organization. The existence of any one of the following conditions clearly indicates that a primary government has the ability to impose its will on an organization:

- a. The ability to remove appointed members of the organization's governing board at will.
- b. The ability to modify or approve the budget of the organization.
- c. The ability to modify or approve rate or fee changes affecting revenues, such as water usage rate increases.



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Application to SEU

There is a financial relationship between the SEU and the State of Delaware. The Delaware Department of Natural Resources and Environmental Control (DNREC) may partner with the SEU to assist in the administration of some or all of the Green Energy Fund² in accordance with 29 Del. C. §8057 (29 Del. C. §8059 (f)(1)).

According to the SEU Fiscal Year 2014 financial statements, the SEU received almost \$12 million from the State of Delaware for capital improvements for certain State of Delaware agencies. This amount was appropriated through the Office of Management and Budget in the Fiscal Year 2012 Bond Bill.

Bonds or notes issued by the SEU shall not be deemed to constitute a debt or liability of the State of Delaware (29 Del. C. §8059 (f)(2)(f)).

The SEU is self-sustaining, using proceeds from the Regional Greenhouse Gas Initiative, portions of the sales of Renewable Energy Credits, tax-exempt bonds and other funding sources that may develop as the program grows (29 Del. C. §8059 (f)(3)). No new state taxpayer funds are used.

The State of Delaware can impose its will on the SEU. According to Section 2.11 of SEU's Bylaws, a director may be removed, with or without cause, by the then current Designator on whose behalf such director was appointed.

Code Excerpts as follows:

29 Del. C. §8059 Sustainable Energy Utility

(f) Funding for the SEU. –

(1) DNREC may partner with the SEU to assist in the administration of some or all of the Green Energy Fund in accordance with §8057 of this title.

(2) Bonds of the SEU. –

(f) Bonds or notes issued under this section shall not be deemed to constitute a debt or liability of the State or of any political subdivisions thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds herein provided therefor. All such bonds or notes shall contain on the face thereof a statement to the effect that neither the State nor any political subdivision thereof shall be obligated to pay the same or the interest thereon and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged

² Delmarva Power and Light Company is required by 26 Del. C. §1014 (a) to deposit a rate of \$.000356 per kilowatt-hour into the Green Energy Fund. All monies deposited into the Green Energy Fund shall be transferred in their entirety to the State Energy Office to fund environmental incentive programs for conservation and energy efficiency in the State.



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to the payment of the principal of or the interest on such bonds. The issuance of bonds under this section shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor, or to make any appropriation for their payment. Nothing contained in this section shall prevent or be construed to prevent the SEU from pledging its full faith and credit or the full faith and credit of a participating facility to the payment of bonds or issue of bonds authorized pursuant to this section.

- (3) Revenue sources contributing to the SEU for the purpose of paying bond debt may include but not be limited to funds from shared savings agreements with SEU participants and partial proceeds from the sale of Renewable Energy Credits or Solar Renewable Energy Credits in local and regional markets. The Green Energy Fund shall provide equity leverage for the SEU.

Per the Bylaws of the Sustainable Energy Utility, Inc.:

ARTICLE II DIRECTORS

2.11 Removal of Directors.

A director may be removed, with or without cause, by the then current Designator on whose behalf such director was appointed. Any individual serving as an ex officio director shall automatically be removed if he or she is removed, resigns, or is otherwise no longer serving in the applicable public office set forth in Section 2.2. Any removal by a Designator pursuant to this Section 2.11 shall be accomplished by delivery of written notification from such Designator (the "Removal Notice") to a Chairperson. All Removal Notices shall be filed in the minute book of this Corporation. Removals shall be effective as of the specified future date in the Removal Notice, or if no date is specified the date of receipt by a Chairperson of the Removal Notice. Directors may not be removed by the Board of Directors with or without cause.

7. The CU meets the blending criteria of ¶53 b.

A component unit should be included in the reporting entity financial statements using the blending method in any of these circumstances:

- a. The component unit's governing body is substantively the same³ as the governing body of the primary government *and* (1) there is a financial benefit or burden relationship between the

³ "Substantively the same" means sufficient representation of the primary government's entire governing body on the component unit's governing body to allow complete control of the component unit's activities. To illustrate, the board of a city redevelopment authority may be composed entirely of the city council and the mayor, serving ex officio. The primary government is, essentially, serving as the governing body of the component unit. On the other hand, the board of a public housing authority composed of the city mayor and two council members (from a total of ten) ordinarily would not be substantively the same as the city's governing body. This criterion will rarely, if ever, apply to a state government because of the impracticality of providing sufficient representation of the state's entire governing body.



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primary government and the component unit, as described in paragraphs 27–33, or (2) management of the primary government has operational responsibility for the component unit. Management of a primary government has operational responsibility for a component unit if it manages the activities of the component unit in essentially the same manner in which it manages its own programs, departments, or agencies.

Management, for purposes of this determination, consists of the person(s), below the level of the governing board, responsible for the day-to-day operations of the primary government (for example, a county executive or city manager).

- b. The component unit provides services entirely, or almost entirely, to the primary government or otherwise exclusively, or almost exclusively, benefits the primary government even though it does not provide services directly to it. The essence of this type of arrangement is much the same as an internal service fund—the goods or services are provided to the government itself rather than to the citizenry. Usually the services provided by a blended component unit are financing services provided solely to the primary government. For example, a building authority may be created to finance the construction of office buildings for the primary government. However, a component unit that provides services to more than just the primary government should also be blended if the services provided to others are insignificant to the overall activities of the component unit. Other component units that should be blended are those that exclusively, or almost exclusively, benefit the primary government by providing services indirectly; for example, a component unit that provides services on behalf of the primary government to its employees rather than directly to the primary government itself.
- c. The component unit's total debt outstanding, including leases, is expected to be repaid entirely or almost entirely with resources of the primary government. Repayment generally occurs through a continuing pledge and appropriation by the primary government to the component unit that, in turn, pledges those appropriation payments as the primary source of repayment for its debt.

Application to SEU

Based on review and consideration of all of the guidance above, including the criteria of ¶53(a) through (c), we conclude the following:

- a. The governing body of SEU (board of directors) is not substantially the same as that of the State (governing body of the State consists of the House and Senate). Further, management of the primary government does not have operational responsibility for the component unit.
- b. SEU provides services entirely, or almost entirely, to the primary government or otherwise exclusively, or almost exclusively, benefit the primary government (Article III, Certificate of Amendment to the SEU Articles of Incorporation).
- c. Debt of SEU is not expected to be repaid with the resources of the primary government.

Therefore, the SEU should be financially presented as a blended component unit of the State of Delaware.



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Per the Certificate of Amendment for SEU, Inc.:

Replace current paragraph THIRD with:

THIRD: This corporation is organized and shall be operated exclusively for charitable, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code. This corporation is formed for the benefit of, and to carry out the purposes of, the State of Delaware in developing, coordinating, and promoting the sustainable use of energy in Delaware and thereby “lessening of the burdens of Government” within the meaning of Section 1.501(c)(3)-1(d)(2) of the Treasury Regulations.



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