



Guidelines for determining if any entity is a “political subdivision or agency”

Political Subdivisions or agency definition for subscription in Xcel Energy’s Solar*Rewards Community Program

The term “political subdivision or agency” is defined in these guidelines as a regional, territorial, or local authority, such as a county or municipality (including a municipal corporation), that is created or recognized by State statute or other authority to exercise sovereign powers. Examples of sovereign powers include the power of taxation, the power of eminent domain, and the police power. The definition of “political subdivision or agency” also provides that the governing officers of the authority must be appointed by officials of a recognized political subdivision or be publicly elected.

These guidelines provide that the determination of whether an entity is a political subdivision or agency is based on a facts and circumstances test, meaning that numerous factors should be applied in determining whether an entity is a political subdivision or agency. Satisfaction of one or more of the factors is not necessarily determinative of whether an organization is a political subdivision or agency. One factor that is not weighed by the Company is the way the entity refers to itself. For example, the mere fact that an entity is called the “Educational Service Agency of City A” would not be a factor in determining whether the entity is a political subdivision or agency of City A.

Major Factors

Major factors for determining whether an entity is a political subdivision or agency are whether:

1. The entity’s governing board or body is controlled by a State or political subdivision.
2. The members of the governing board or body are publicly nominated and elected.
3. The entity’s employees are treated in the same manner as employees of the State (or recognized political subdivision) for purposes other than providing employee benefits (for example, the entity’s employees are granted civil service protection).
4. A political subdivision or agency has fiscal responsibility for the general debts and other liabilities of the entity (including funding responsibility for the employee benefits under the entity’s plans).
5. The entity is delegated, pursuant to a statute of a State or political subdivision, the authority to exercise sovereign powers of the State or political subdivision (such as, the power of taxation, the power of eminent domain, and the police power).

It is expected that, in applying the factor relating to whether the entity's governing board or body is controlled by a State or political subdivision, the control cannot be a mere legal possibility.

Examples of situations in which the control factor might be a mere legal possibility are cases in which there are a number of tiers of intervening corporations between the entity and the State, and cases in which the legal power to control is shared among so many governing entities that none of them can be said to be responsible in the event of a failure to exercise control. In addition, since these two factors are interrelated, an entity that would satisfy the control factor would not be expected to satisfy the factor relating to whether members of the governing board or body are publicly elected or nominated. Alternatively, an entity that would satisfy the factor relating to whether members of the governing board or body are publicly elected or nominated would not be expected to satisfy the control factor.

Additional Factors

Other factors for determining whether an entity is part of a political subdivision or agency are whether:

6. The entity is created by a State government or political subdivision pursuant to a specific enabling statute that prescribes the purposes and powers of the entity, and the manner in which the entity is to be established and operated.
7. The entity is directly funded through tax revenues or other public sources.
8. The entity is treated as a governmental entity for Federal employment tax or income tax purposes (for example, whether the entity has the authority to issue tax-exempt bonds under section 103(a) of the Code) or under other Federal laws.
9. The entity's operations are controlled by a State or political subdivision.
10. The entity is determined to be an agency or instrumentality of a State or political subdivision thereof for purposes of State law. For example, the entity is subject to open meetings laws or the requirement to maintain public records that apply only to governmental entities, or the State attorney general represents the entity in court under a State statute that only permits representation of State entities.
11. The entity is determined to be an agency or instrumentality of a State or political subdivision thereof by a State or Federal court.
12. If a party other than the entity has an ownership interest, or other similar interests, in the entity, this factor would indicate that the entity is not a political subdivision or agency (however, an entity would not necessarily be considered a political subdivision or agency merely because there is no private ownership in the entity or the entity serves a governmental purpose).
13. If an entity does not serve a governmental purpose, this factor would indicate that it is not a political subdivision or agency.

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