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Stephen A. Arditti, Assistant Vice President and Director

August 24, 2004

The Honorable Tom Torlakson, Chair  
Senate Local Government Committee  
California State Senate  
State Capitol, Room 5061  
Sacramento, CA 95814

Dear Senator Torlakson:

**Re: *AB 3036 (Capital Facilities Fees), As Amended August 23, 2004***  
***Set for Hearing in the Senate Local Government Committee Wednesday, August 25, 2004***  
**Position: OPPOSE**

On behalf of the University of California, I am writing to express our strong opposition to AB 3036 (Yee), which would amend existing law to repeal portions of a 1988 legislative compromise that dictates how municipal utilities collect capital expenses from their government agency customers (public agencies, schools, and universities).

Current law states that any capital charge imposed upon a government agency customer, no matter how the charge is assessed (one-time, monthly, or periodic), must be proportionate to the customer's usage of the utility facility. Additionally, with respect to public schools, universities, and state agencies, capital charges must be for utility facilities that serve the customer and any increase in an existing capital charge that exceeds the rate of inflation must be negotiated. AB 3036 would exempt from the above requirements any capital charge that is part of a government customer's monthly utility bill. This exemption would give municipal utility districts the unilateral ability to legally embed a disproportionate share of capital costs in the monthly utility bills of their government agency customers, even capital costs associated with unrelated new growth and development. The only standard imposed by AB 3036 is that rates paid by government agency customers must be determined by the same criteria and methodology applied to the rates of comparable nonpublic customers. This, in effect, would be no standard at all because the municipal utilities have sole and absolute authority to determine the criteria and methodology and could very easily game the system to ensure government agency customers pay utility rates higher than all other customers.

In addition to the significant policy implications, AB 3036 is troubling because it seeks to alter a long-standing legislative compromise in the final hours of the legislative session. To be blunt, AB 3036 is an 11<sup>th</sup> hour "gut and amend" intended to rewrite legislative history. In 1986, Jerry Jordan, then the Executive Director of the California Municipal Utilities Association, testified before a joint hearing of the Senate and Assembly Committees on Local Government, and described the California Supreme Court's decision in the case of San Marcos Water District v. San Marcos Unified School District, as follows:

“Although the case talks in terms of capacity charges of water and sewer utilities we are convinced that it would affect all rate structures of every type of publicly owned utility. There is some element of capital facilities charge in all utility rates. The court very clearly stated ‘under the rule we adopt, no matter how the form of the fee is varied (i.e., whether based on actual or anticipated use, or unrelated to use; whether one-time or a monthly fee; and whether charged to all property owners or only to users of the sewer system), the purpose of the fee will determine whether or not public entities are exempt from paying the fee. In sum, a fee aimed at assisting a utility district to defray the costs of capital improvements will be deemed a special assessment from which other public entities are exempt.’” (court emphasis)

Clearly, municipal utilities recognized that the San Marcos decision applied to all capital charges and therefore sought broad legislative authority in 1988, via AB 1350 (Cortese), to recover the costs of capital improvements. That bill and the protections afforded government agency customers applied to all capital facilities fees, regardless of form – one-time, monthly, or periodic. Otherwise, and by their own analysis, municipal utilities would not have the requisite statutory authority to assess capital fees. So, to now say that AB 1350 applied only to narrowly defined capacity charges and connection fees, and not to all capital charges and fees, including those embedded in monthly service rates, is disingenuous and absurd.

AB 3036 would cost state and educational agencies tens of millions of dollars each year. UC alone would face an estimated \$5.5 million in additional utility costs each year if the bill passes. With the State’s budget problems, those additional costs may have to be absorbed by the University, in the form of deferred building maintenance and safety repairs, delays in providing new classrooms and laboratories, or a student fee hike. At a time like this, it doesn’t make sense to increase the burden on the University’s already strained financial resources, especially when the Little Hoover Commission has concluded that public utilities, lacking oversight or regulation, continue to amass billions of dollars in excess reserves that are not considered in rate setting. Utility districts are likely the only government entities to have budget surpluses and are not in need of a financial handout at the expense of public schools and state agencies.

As you may know, a bill similar to AB 3036, AB 1051 (Goldberg), was vetoed last year because of, “concerns about the potentially significant fiscal impact on public entities and state agencies, specifically, educational institutions. Public utility providers should provide more information about how capital costs are allocated by rate class.”

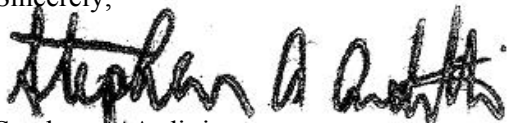
After the veto of AB 1051, a coalition of public agencies, including UC, CSU, community colleges, K-12 public schools and county government, made an extraordinary effort to work out a compromise with proponents of AB 3036. The coalition offered multiple proposals that sought to resolve the concerns of the proponents yet maintain minimal protections against state and educational agencies becoming the “deep pockets” for funding utility district capital projects. While UC and its coalition partners have gone to great lengths to reach a compromise, AB 3036’s proponents have been unyielding and insistent on securing greater latitude in rate setting, reduced accountability, and a stronger hold on the legacy of no regulatory oversight.

AB 3036 in no way represents a balanced compromise and completely reneges on the hard-fought agreement reached sixteen years ago in AB 1350. AB 3036 is unilaterally advantageous to public utilities and leaves state and educational agencies with no means to protect themselves against arbitrary and excessive fees imposed by public utilities.

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For all of these reasons, the University of California urges a "No" vote on AB 3036. If you would like to discuss this matter further or if you have any questions regarding our position, please do not hesitate to contact Legislative Director Vince Stewart or me at (916) 445-9924.

Sincerely,

A handwritten signature in black ink that reads "Stephen A. Arditti". The signature is written in a cursive, slightly slanted style.

Stephen A. Arditti  
Assistant Vice President and Director  
State Governmental Relations

cc: Members of the Senate Local Government Committee  
Assembly Member Leland Yee  
President Robert C. Dynes  
Sr. Vice President Bruce B. Darling  
Sr. Vice President Joseph P. Mullinix  
Paul Navarro, Deputy Legislative Secretary, Governor Schwarzenegger  
Peter Detwiler, Consultant, Senate Local Government Committee