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09/30/24

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R2010002



California Public
Utilities Commission

STAFF PROPOSAL Permanent Rates for Incarcerated Persons Calling Services Rulemaking 20-10-002

COMMUNICATIONS DIVISION

August 1, 2024

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Permanent Rates for Incarcerated Persons Calling Services

Summary

On July 12, 2021, the California Public Utilities Commission (CPUC or Commission) adopted interim calling rates for intrastate Incarcerated Persons Calling Services (IPCS) of \$0.07 per minute for debit, prepaid calls, and collect calls. All ancillary fees associated with the provision of intrastate and jurisdictionally mixed IPCS are capped.¹ Based on the information provided by intrastate IPCS service providers in this proceeding, Rulemaking (R.) 20-10-002, Staff recommends that the CPUC adopt a permanent intrastate rate price cap of \$0.045 per minute for debit, prepaid, and collect calls and keep the ancillary fee caps permanent. Staff recommends that the \$0.045 per minute price cap apply to all jails, prisons, and juvenile detention centers of all sizes.² This includes all facilities that are not covered by Senate Bill (SB) 1008 (Becker, 2022).³

Service providers that can substantiate the need for a higher per-minute rate than the permanent rate cap may apply to charge different rates through the Commission's general rate case process. Staff recommends that the Commission adjust IPCS calling rate caps annually based on inflation and ensure that price cap regulation incorporates efficiency gains.

This approach guarantees that the adjustment is not solely tied to inflation but also captures various economic inputs essential for appropriately limiting any annual increase. Other

¹ See Decision (D.) 21-08-037, OP 3 at 115-116 - prohibited the imposition of any single-call, paper bill, live agent, and/or automated payment fees; collection of third-party financial transaction fees is limited to pass through of the exact fee only, with no mark up, and excluding any credit card charges, up to a cap of \$6.95 per transaction; collection of government-mandated taxes and fees is limited to the pass through of the exact fee only, with no mark up; and imposition of any other type of ancillary service fee or service charge not explicitly approved by the CPUC is prohibited.

² Consistent with D.21-08-037 at 20, the rate should apply “to intrastate IPCS provided to any local, state, or federal correctional or detention facility type operated in California housing adults and/or juveniles, including but not limited to city and county jails, federal and state prisons, correctional facilities, juvenile detention facilities, holding centers, camps, psychiatric hospitals, immigration detention centers, military jails and tribal jails.”

³ SB 1008 added Section 2084.5. (a) of the Penal Code which states: “A state prison or youth residential placement or detention center operated by the Department of Corrections and Rehabilitation shall provide persons in their custody and confined in a correctional or detention facility with accessible, functional voice communication services free of charge to the person initiating and the person receiving the communication. The Department of Corrections and Rehabilitation shall have operational discretion in implementing this subdivision such that free voice communication services do not interfere with necessary programming.”

Commission decisions, such as general rate case proceedings, bolster this recommendation.⁴ Some have emphasized considering broader economic factors alongside inflation in determining rate adjustments.⁵

Background

On October 8, 2020, the Commission opened R.20-10-002 to consider how to ensure incarcerated people and their families have access to intrastate telecommunication services at just and reasonable rates and to appropriately regulate telecommunications services used by incarcerated people. Subsequently, on August 23, 2021, the Commission issued D.21-08-037, which adopted interim intrastate rates of \$0.07 per minute for debit, prepaid, and collect calls. The Commission concluded that swift action was necessary to set an interim rate cap due to the financial hardships of maintaining contact with incarcerated persons during COVID-19 and that Phase II would consider a permanent rate cap. The CPUC adopted the \$0.07 per minute rate cap based on (1) the California Department of Corrections and Rehabilitation (CDCR) capping intrastate IPCS rates in California prisons at \$0.025 per minute through 2026,⁶ (2) the Federal Communication Commission's (FCC) determination that it costs service providers no more than 25 percent more to provide IPCS to jails with a population greater than 1,000 as compared to prisons,⁷ (3) the fact that other states had rates well below \$0.05 per minute,⁸ (4) the addition of \$0.02 per minute to allow the maintenance of site commission funds for California counties, and (5) the finding that costs to provide intrastate IPCS did not change based on the size of the facility.⁹

On September 29, 2022, Governor Gavin Newsom signed SB 1008 (2022), which provides functional voice communications services free of charge to people incarcerated in a state prison or a state, county, or city youth residential placement or detention center. The CDCR will cover the cost of voice communications and have operational discretion so that free voice communication services do not interfere with necessary programming.¹⁰ While SB

⁴ <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-rates/general-rate-case>

⁵ Affordability Rulemaking: <https://www.cpuc.ca.gov/affordability>

⁶ D.21-08-037 at 51.

⁷ D.21-08-037 at 52 citing WC Docket No. 12-375, *Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking* (FCC Third Order) at ¶ 148.

⁸ D.21-08-037 at 52-53, citing, state sources in New Jersey, Illinois, Texas, and New York.

⁹ D.21-08-037 at 54-56.

¹⁰ See SB 1008 - [Bill Text: CA SB1008 | 2021-2022 | Regular Session | Chaptered | LegiScan](#) (website last visited 6/9/2023)

1008 represents a crucial advancement in addressing incarcerated individuals' communication barriers, CPUC staff have identified relevant limitations. Specifically, SB 1008 does not extend coverage to federal prisons or facilities outside the jurisdiction of CDCR, such as local jails. Therefore, despite the provisions of SB 1008, there is a need to address communication affordability and accessibility issues for individuals incarcerated in these non-state facilities.

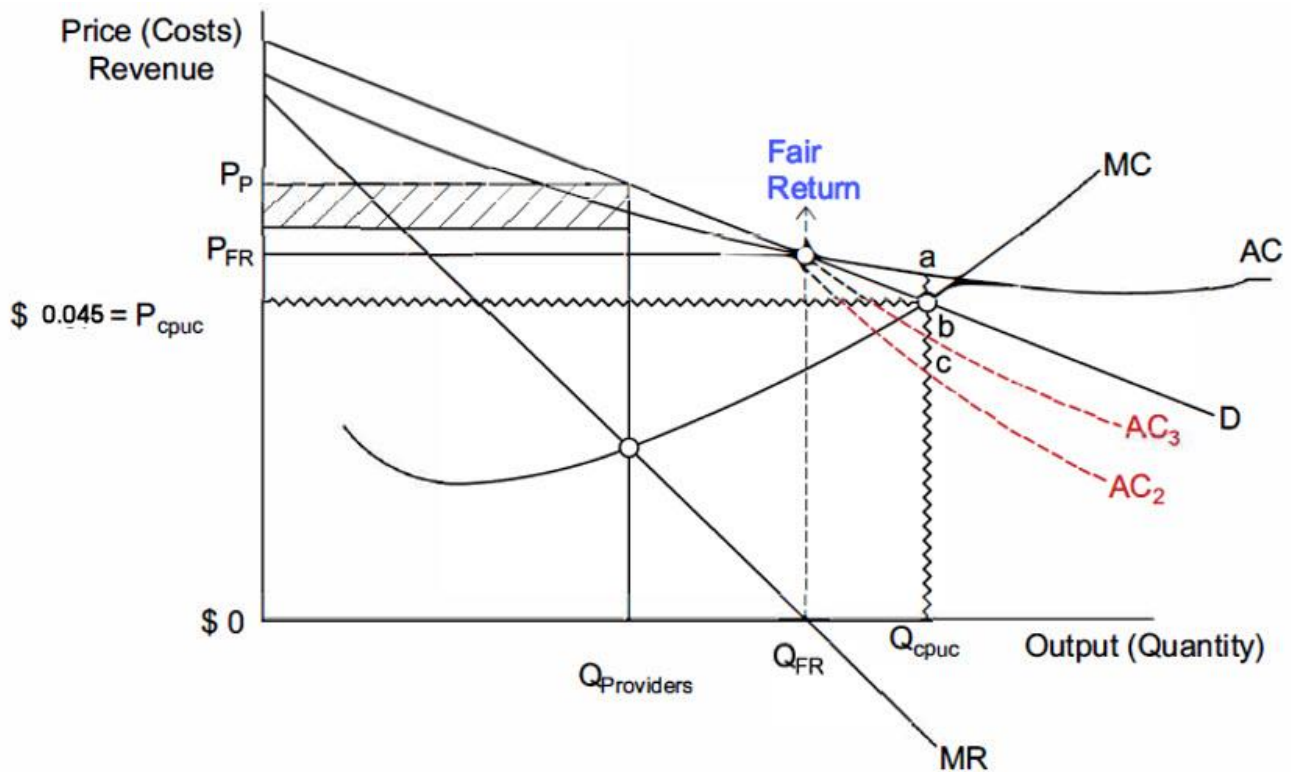
The decision further prohibits specific ancillary fees and caps third-party financial transaction fees at \$6.95, with no pass-through. All IPCS providers must also submit quarterly Interim Rate Compliance Reports.

The proposed rate adjustments discussed in this proposal aim to bridge this gap by ensuring equitable access to affordable communication services for all incarcerated individuals and their families, regardless of the facility's jurisdiction. By implementing a sustainable rate structure and capping ancillary fees, the proposal seeks to promote meaningful connections between incarcerated individuals and their support networks outside prison walls, contributing to rehabilitation and successful reintegration into society.

Theoretical Framework for Permanent Rate Cap for IPCS

In regulating calling rates for intrastate IPCS, a fundamental economic dilemma arises from the conflicting interests of providers seeking profit maximization and the imperative for fairness and accessibility for incarcerated individuals. Providers naturally seek to maximize profits, operating at the point where marginal cost (MC) equals marginal revenue (MR). This results in high prices (P_p) and restricted quantities ($Q_{\text{providers}}$), especially in monopoly or oligopolistic market structures. See the diagram below for an illustration.

Figure 1: Regulatory Framework for Adoption of Permanent Intrastate Price Cap of \$0.045



However, such high prices create significant inefficiencies and burdens for customers reliant on monopolistic IPCS providers (incarcerated individuals, their families, and other close contacts), necessitating regulatory intervention to ensure just and reasonable rates charged to obtain reliable and accessible communication services. The CPUC's adoption of a permanent intrastate rate cap of \$0.045 per minute, which may be typically lower than the profit-maximizing point, expands market access and promotes social welfare. The return to providers depends on the actual costs of providing the service. In theory, at a given average cost (AC), such as AC_2 (point c) or AC_3 (point b), the CPUC rate may still allow providers to make profits, albeit lower than under profit-maximizing conditions (P_p).

Alternatively, a compromise solution exists where average cost (AC) equals demand (D), ensuring providers cover economic costs while earning regular and positive accounting profits. This is a fair return point. The CPUC explicitly considered this balance between profitability and accessibility when determining the permanent rate cap of \$0.045. The overarching aim when navigating the monopolistic regulatory landscape of IPCS is the promotion of economic sustainability and social equity.

Discussion and Recommendations

This staff proposal recommends the CPUC adopt permanent intrastate calling rate caps for IPCS services and rate caps for ancillary fees and charges. The permanent intrastate rate cap for debit, prepaid, and collect calls should be \$0.045 per minute. In formulating this permanent rate cap, Staff considered the following issues: 1) the affordability of high site commissions, as well as sign-on bonuses for individual facilities; 2) the lack of provider cost data and expenses, and 3) the lack of reasonable evidence or complaints¹¹ of hardship from providers or carceral facilities on the impact of interim calling rates.

High Site Commissions and Sign-on Bonuses

Staff noted that IPCS providers can afford to pay an extremely high dollar amount of site commissions and sign-on bonuses ranging from thousands to millions of dollars. This indicates that the per-minute calling rate can be reduced without preventing providers from covering the costs of service provision. Furthermore, based on data submitted by IPCS providers in this proceeding, contracts have shown that IPCS providers can offer site commissions as high as 85% of IPCS costs.¹² Staff includes site commissions based on the used and useful costs incurred by correctional facilities as part of the costs to provide IPCS. Staff notes that IPCS providers are permitted to reimburse correctional facilities for the used and useful costs they incur to enable the provision of IPCS.

In D.21-08-037, the Commission allowed \$0.02 from the per-minute calling rate for site commissions. Site commissions are one factor utilized by IPCS providers to determine the rates of IPCS service. Moreover, there is no mandate on a set amount that must be collected or that site commissions exclusively fund incarcerated persons' welfare programs. Accordingly, Staff recommends keeping the site commission cap at \$0.02 per minute.¹³

¹¹ See D.21-08-037. In D22-04-038, the Commission denied Securix' and Network Communications International Corp.'s (NCIC) applications for rehearing.

¹² See *id.* Based on review of the contracts submitted by IPCS providers which were submitted pursuant to the protective order and are confidential.

¹³ IPCS providers will also need to ensure that their rates comply with the FCC's recent *Report and Order, Order and Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking* (released on July 22, 2024 in WC Dockets Nos. 23-62 and 12-375), which allowed recover of some costs for safety and security measures necessary to provide IPCS, but otherwise prohibited site commission.

Lack of Provider Cost Data and Expenses

D.21-08-037 encouraged IPCS providers to provide cost data to the Commission during Phase II of this proceeding to aid the Commission with adopting a more permanent rate cap.¹⁴ Since the decision's adoption on August 19, 2021, IPCS providers have failed to furnish any data to substantiate the necessity for a higher permanent calling rate. It is imperative to underscore that CPUC does not equate permanent call rate setting with profit maximization. Instead, the primary objective is to establish a rate that optimizes social benefits related to communication for incarcerated persons while ensuring that providers can adequately deliver the service at the requisite quality levels. Thus, determining the social optimum price transcends mere considerations of the costs and expenses of doing business.

Lack of Opposition or Complaints

To date, Staff has not received information from IPCS providers or carceral facilities showing that the interim rates have affected carriers' profitability such that they would not provide communication services. The Global Tel*Link (GTL) contract with the CDCR setting rates at \$0.025 per minute shows that a lower rate is feasible.¹⁵ While understanding that different companies have different operating expenses and requirements, Staff believes that the interim rates are too high and should be reduced. In determining the calling rate, Staff considered the CDCR contract, free IPCS calling in other states, and the inflated cost of site commissions, all of which justify reducing rates from \$0.07 per minute to \$0.045. If IPCS providers disagree with this proposed rate, they may have their situations evaluated by filing a formal general rate case application.

Calculation of New Lower Calling Rates

In calculating the new rate, Staff decoupled the site commission cost from the per-minute rate. Staff evaluated several rates adopted by the FCC to illustrate that the provision of site commissions greatly increases the rates of IPCS. Staff found that site commission can cost as high as 85% and as low as 30% of IPCS costs, without including the cost of sign-on bonuses. If site commissions are separated, the actual cost of the call ranges from \$.002 to \$.17 per minute.

¹⁴ D.21-08-037 at 57.

¹⁵ [California Department of Corrections and Rehabilitation Announces Reduced Cost of Telephone Calls for Incarcerated Population - News Releases](#) (Website last visited 6/9/2023)

Calling Rate per minute ¹⁶	Site Commission Cost of 85%	Site Commission Cost of 30%	Actual Cost of Call
\$0.14	\$0.12	\$0.04	\$0.02 to \$0.10
\$0.16	\$0.14	\$0.05	\$0.02 to \$0.11
\$0.21	\$0.18	\$0.06	\$0.03 to \$0.15
\$0.25	\$0.21	\$0.08	\$0.04 to \$0.17

Therefore, since IPCS providers can charge as low as \$0.02 per minute, numerous companies are willing to provide service at that price point without reported issues or exits from the industry.¹⁷ Staff believes a \$0.045 per minute price cap is reasonable. This conclusion is based on the understanding that the service cost is no more than \$0.02 per minute, coupled with the site commission cap of \$0.02 per minute.

Ancillary Fees and Charges

In addition to site commissions, ancillary fees also vastly increase the final cost for a call, as Staff found in its revised proposal in Phase I of the proceeding. If a 15-minute call at \$0.07 per minute is \$1.05 but includes a \$5.95 connection fee, then the real loaded rate is \$0.47 per minute. Similarly, if a credit card paid for the call, it could cost another \$3.00, which makes the real rate \$0.67 per minute.

As the FCC has found, many factors can increase the cost of a short 15-minute phone call to incarcerated service users.¹⁸ There is no compelling reason why these ancillary fees should not be capped. Therefore, Staff recommends keeping the rules for capping ancillary fees and prohibiting charges without prior commission approval. Furthermore, Staff recommends that any allowable ancillary fees be fixed and not based on a percentage of the total amount.

Alternatively, the Commission could consider moving away from per-minute rates for all IPCS communication services. This pricing scheme is no longer used in the consumer market, either by wireless or wireline communication services. There does not appear to be any compelling reason why service to incarcerated persons requires a different pricing model

¹⁶ FCC’s Third Order had a per-minute rate cap for prison (\$0.14) and jail (\$0.16) calls. The FCC’s Second Report and Order and Third Further Notice of Proposed Rulemaking (released on Nov. 5, 2015 in WC Docket No. 12-375) had an interstate rate cap of \$0.21 per minute for debit and prepaid calls, and \$0.25 per minute for collect calls.

¹⁷ No reports indicate that GTL, Securus Technologies, CenturyLink (now Lumen), Pay-Tel Communications, or Legacy Inmate Communications have exited the IPCS market in California.

¹⁸ Federal Communications Commission. (2022, December 9). 47 CFR Part 64 [WC Docket No. 12–375; FCC 22–76; FR ID 113660]. Rates for Interstate Inmate Calling Services. Federal Register, Vol. 87, No. 236, 75496. Retrieved from [2022-25192.pdf \(govinfo.gov\)](#)

than service to the non-incarcerated. SB 1008 mandates that voice calling services for incarcerated individuals and their families in all state prisons and juvenile facilities in California be provided free of charge. Consequently, implementing a monthly rate structure for additional services may offer long-term cost-effectiveness compared to traditional per-minute rates.

Moreover, a monthly rate structure is more efficient and predictable, allowing families to budget more effectively without the fear of unexpected high charges. This model aligns with modern consumer practices, simplifying billing processes and reducing administrative overhead associated with tracking and billing per-minute usage. Adopting this approach ensures that incarcerated individuals and their families benefit from the same economic efficiencies and conveniences that non-incarcerated consumers enjoy, promoting fairness and equity in communication services. However, an important consideration is that if calls to all incarcerated persons in the state are provided free of charge under SB 1008, then the proposed fees apply to prisons and juvenile facilities not covered by SB 1008, *i.e.*, county jails and facilities.

While SB 1008 ensures free voice calling within state-run institutions, the proposed rates will pertain to communication services offered in prisons or other facilities not governed by SB 1008. This proposal would, therefore, provide rate consistency in California should a provider wish to charge in a state prison or facility but describe it as a fee outside of the free calling charge mandated by SB 1008. This provision could create a loophole where providers might label certain communication services as "additional" or "enhanced" features outside the scope of the free voice calls mandated by SB 1008. By doing so, they could impose fees for these services, effectively circumventing the intent of SB 1008 to eliminate financial burdens on incarcerated individuals and their families. This loophole could undermine the law's purpose by allowing providers to generate revenue through ancillary charges, thereby maintaining a financial barrier to communication despite the legislative mandate for free voice calls. Therefore, the proposed fee structure could complement SB 1008 by extending affordable communication options to individuals incarcerated in these non-state facilities and prisons. Additionally, the proposal may introduce novel features or services not covered by SB 1008, such as secure messaging services or access to educational and rehabilitative content via digital platforms. These enhanced services could facilitate more frequent and meaningful interactions, support educational goals, and help maintain strong family connections, ultimately contributing to the well-being and rehabilitation of incarcerated individuals, thereby providing incarcerated individuals and their families with expanded communication opportunities beyond the scope of the state legislation.

Allow Annual Rate Adjustment

Staff proposes that the Commission allow IPCS calling rate caps to be adjusted annually due to inflation. The adjustment would be based on the Consumer Price Index (CPI) for Telecommunications Services, which includes services associated with wireless and residential telephone communications, internet access, and television services.¹⁹ The rate was 0% as of 2024.²⁰

Staff also recommends using CPI minus an X factor for Telecommunications Services since it is the closest match for IPCS communication services. IPCS fundamentally operates as a telecommunication service, facilitating voice, video, and digital communication between incarcerated persons and their contacts outside the facility. This categorization is appropriate because IPCS relies on the same infrastructure, technology, and regulatory frameworks as other telecommunication services, ensuring reliable and secure communication. By aligning IPCS with Telecommunications Services, pricing can be more accurately adjusted to reflect market trends and cost structures, promoting fairness and consistency. The X factor represents the cost savings achieved by IPCS carriers to be shared with consumers while providing the incentives to maximize and accomplish these savings. We propose an initial X factor of 0.5% for years when the CPI is at or below 3.0% and 0.75% for years when the CPI is above 3.0%.

The adjustment formula for IPCS calling rate caps is:

$$\textit{Adjusted Rate} = \textit{Current Rate} \times \left(1 + \frac{\textit{CPI} - \textit{X Factor}}{100}\right)$$

Example Calculations:

- If the CPI is 2.5% and the current rate is \$1.00 per minute, the X factor of 0.5% applies:

- $\textit{Adjusted Rate} = 1.00 \times \left(1 + \frac{2.5-0.5}{100}\right) = 1.02$

- If the CPI is 4.0% and the current rate is \$1.00 per minute, the X factor of 0.75% applies:

- $\textit{Adjusted Rate} = 1.00 \times \left(1 + \frac{4.0-0.75}{100}\right) = 1.0325$

Staff further recommends that rate adjustments take effect on January 1 each year.

¹⁹ See [Measuring Price Change in the CPI: Telecommunications Services: U.S. Bureau of Labor Statistics \(bls.gov\)](https://www.bls.gov/news.release/cpi.t01.htm)

²⁰ Bureau of Labor Statistics. (2024, March 12). Consumer Price Index – February 2024 [Press release]. Retrieved from <https://www.bls.gov/news.release/pdf/cpi.pdf>

Providers must file a Tier 2 advice letter (AL) with the Commission to adjust the rates based on the CPI and the appropriate X factor. Advice letters must be filed by November 15 each year to ensure adequate time for review and implementation.

Given technological advancements' continual impact on calling rates and dynamic market fluctuations affecting pricing, we do not foresee the annual adjustment process as indefinite. Nevertheless, we do not recommend specifying a termination date for this adjustment process. We anticipate that stakeholders will submit petitions for modifications as warranted by evolving circumstances.

Application Process

As mentioned above, IPCS providers that need to charge more than the permanent calling rate caps adopted by the Commission may file an application seeking to establish higher rates. Any such request shall be filed as a formal general rate case application. A request must demonstrate that the standard IPCS rates are insufficient to cover the cost of providing IPCS meeting customer needs in terms of reliability and quality of service. Service providers must submit actual cost data to support their claim(s), such as internal financial statements, operating expenses, capital expenses, audited financial statements, related contracts, financial statements from carceral facilities, and other supporting documentation. During the review, IPCS providers must adhere to the effective calling rates until the Commission decides on the general rate case application. An IPCS provider requesting authorization for rates above the permanent rate cap must also provide evidence demonstrating the proposed rates will be affordable to customers despite exceeding the rate cap and any planned measures to mitigate customer costs. This evidence could include detailed financial analyses showing the impact of the rate increase on different customer segments, comparative studies of rates in similar markets, and customer surveys indicating willingness to pay. Additionally, the provider should outline specific measures to offset customer costs, such as discounts, payment plans, or subsidies for low-income families. Should it be required, interim relief may be granted through our normal cost-of-service regulatory processes.

Timeline for Implementation of Permanent Rates

Staff recommends that the Commission adopt permanent calling rates and caps of ancillary fees as soon as practicable. In D.21-08-037, interim rates were adopted 45 days after the decision was issued. Staff proposes the same deadline for implementing permanent calling rates and ancillary fees.

Compliance

Staff recommends that the Commission require IPCS providers to file a compliance notice with the Communications Division at CD_Director@cpuc.ca.gov within 45 days of adopting the permanent rates. This notice should include the following:

- Attestation or contract addendums that the permanent calling rates and ancillary fees have been implemented at all facilities served by the provider in California.
- Copies of or links to provider webpages where the permanent calling rates and ancillary fees are presented for facilities located in California.
- Copies of notices provided to facilities of the permanent calling rates and ancillary fees.
- Copies of notices to incarcerated persons of the permanent calling rates and ancillary fees.

Staff further recommends that the Commission allow Staff to impose penalties on a ministerial basis, which will be determined in the resolution after the IPCS rate decision.

(END OF ATTACHMENT A)