State of Washington
PUBLIC DISCLOSURE COMMISSION
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Memo

To: PDC Commissioners
From: Sean Flynn, General Counsel
Date: July 16, 2026
Re: APA rulemaking petition (Edwards) re enforcement penalty schedule

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The Petitioner submitted a rulemaking petition on July 6, 2026. The petition requests the Commission to amend its rules regarding the meaning of "occasion" as applied to the enforcement penalty schedules adopted for brief and full commission adjudicatory proceedings.

Under the Administrative Procedure Act (APA), a person may petition an agency requesting the adoption, repeal, or amendment of a rule. Within 60 days of the submission of a petition, the agency must either deny the petition or initiate the rulemaking process. If the Commission denies the petition, it must state its reasons for the denial, addressing the concerns raised and alternative means of addressing the concerns, where appropriate.

The petition here proposes to amend the rules setting forth the meaning of an "occasion" for purposes of calculating prior violations that can be used to increase a penalty imposed by the Commission. The rules set forth penalty schedules both for brief enforcement proceedings and full Commission proceedings, distinguished by the severity of the violation. WAC 390-37-143 & 182. The schedules establish a base penalty for each "first occasion" per category with increasing penalties for successive second and third occasions within each category.

The petition seeks to require the Commission to count *any* additional violation as an "occasion," regardless of the category of offense. The Commission has just completed rulemaking regarding enforcement processes, adopting provisions effective at the beginning of this year that increased the penalty amounts within the schedules, expanded the categories of violations in the schedules, and included instances where the respondent acknowledged a violation within the meaning of occurrence used to calculate penalties. The petitioner had ample notice and opportunity during that extensive rulemaking process to propose a rule change on the same topic.

Now, barely 6 months removed from those rule changes taking effect, the petitioner asks the Commission to reopen consideration of the penalty schedule with the stated intent to impose larger penalties on respondents. However, the proposal does not conform to the penalty schedules. An occasion, as used in each schedule, refers to a subsequent violation *within a particular category*. Since each category has a separate penalty schedule, it would be incongruent to use a violation under one category as a subsequent occasion for a different

category. Such fungibility of occasions would require the recalibration of the entire penalty schedule. PDC staff do not make any recommendation on the petition, but staff have not identified a need to impose larger penalties so soon the after consideration and adjustments made to the penalty schedule in recent rulemaking.