

*Recent Cases from the Court of Appeal Construing Section 1759*  
(In Reverse Chronological Order)

**10. *Southern California Edison v. City of Victorville***

217 Cal. App. 4th 218, 2013 Cal. App. LEXIS 478 (June 17, 2013)

The Court of Appeal (Fourth District, Division Two) reversed the trial court's dismissal of a complaint against Southern California Edison ("SCE"). The plaintiff was injured when a car in which she was riding struck a street pole placed and maintained by SCE. The plaintiff sued both the City of Victorville ("City") as well as SCE. SCE successfully moved for dismissal relying on Section 1759. SCE argued that placement of light poles fell within the exclusive jurisdiction of the Commission and that SCE's placement of the pole at issue was pursuant to a lawfully filed tariff which (1) required SCE to place street lights as directed by the City of Victorville ("City") and (2) included a provision limiting SCE's liability. Reversing the trial court, the Court of Appeal noted at the outset that nothing could support a claim that the pole at issue was placed as directed by the Commission or pursuant to any tariff approved in a Commission decision. The court next observed that the City possessed the authority to subject SCE to the police powers of the City so long as not in conflict with Commission requirements. The Court also recognized that not only was Commission jurisdiction over the placement of street lights not exclusive but SCE could not cite an instance of the Commission actually exercising whatever authority it had over street light placement. Indeed, as the Court noted, the Commission left the placement of the street lights to the "applicant"; under SCE's tariff, the applicant is the City. The City's exercise of its authority to place the streetlights could not be deemed to interfere with the Commission in a manner that implemented Section 1759. The Court also concluded that the limitation of liability provision in the SCE tariff was inapplicable. To make matters worse for SCE, the Court held that SCE could not seek indemnification from the City because SCE had not first timely filed a government claim.