

Recent Cases from the Court of Appeal Construing Section 1759

(In Reverse Chronological Order)

2. *Lefebvre v. Southern California Edison*

244 Cal. App. 4th 143; 2016 Cal. App. LEXIS (January 25, 2016) 46

The Court of Appeal (Second District, Division 4) affirmed the trial court’s dismissal of a class action suit against SCE alleging that SCE fraudulently enrolled ineligible customers in the California Alternate Rates for Energy (CARE) program. The plaintiff claimed that SCE employed funds received from non-CARE customers to subsidize plainly ineligible CARE customers to inflate the CARE program participation rolls and thereby “curry favor with the PUC and increasing the likelihood that the PUC would approve Edison’s requests for future rate increases.” The trial court’s dismissal of the class action had not rested on Section 1759 but instead relied on Section 532 which prohibits a public utility from “refund[ing] or remit[ting], directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals, and charges” specified in a filed tariff. The Court of Appeal affirmed the dismissal but elected to rely on Section 1759. The parties had already agreed that the first two prongs of *Covalt* were satisfied; the only question was “whether Lefebvre’s action in superior court would hinder or interfere with the commission’s exercise of its regulatory authority.” The Court concluded that SCE satisfied the third prong by tying the outcome to ongoing CARE rates. It found the matter susceptible to analysis similar to that adopted in *Guerrero* (Para. 7, *infra*). Both cases affirm that the fastest path toward satisfaction of the third prong of *Covalt*, begins by finding some connection (however thin) between the civil court action and ongoing utility rates.