

*Recent Cases from the Court of Appeal Construing Section 1759*

(In Reverse Chronological Order)

**3. *Pegastaff v. Pacific Gas & Electric Company***

239 Cal. App. 4th, 1303, 215 Cal. App. LEXIS 755 (“*Pegastaff II*”)

The Court of Appeal (First District, Division 2) reversed the trial court’s dismissal of actions against PG&E predicated on the same claims described in *Pegastaff I* (Para. 5, *infra*). With respect to PG&E, however, the Court permitted Pegastaff’s suit to continue. The Court applied the three part test in *Covalt* and concluded that while the Commission had jurisdiction to regulate utility minority enterprise diversity programs (Prong 1) and had in fact done so (Prong 2), nothing in the action in Superior Court would have interfered with the Commission’s ability to administer that program (Prong 3). The Court, after reviewing all of the recent 1759 decisions, concluded that an action against the PG&E for exercising preferences in favor of certain enterprises did not interfere with the Commission’s administration of its General Order 156. The Court indicated that “the PUC could not have stated more explicitly that utilities are not permitted to achieve their GO 156 goals by the use of preferences. There can be no doubt that the tier system as described in Pegastaff’s [Complaint] is a preferential system.”