

Recent Cases from the Court of Appeal Construing Section 1759

(In Reverse Chronological Order)

4. *Davis v. Southern California Edison*

236 Cal. App. 2d 619 (2015)

The Court of Appeal (Second District, Division 7) affirmed the trial court's dismissal of Davis's claim that Edison violated its Tariff Rule 21 and a Commission mandated program when processing his application to interconnect solar systems and sell electricity to Edison. The court noted that before filing the action with Superior Court, Davis had filed two formal complaints with the Commission that related to his attempts to interconnect his solar generating systems to the grid (both denied in April of 2016.) The trial court sustained Edison's demurrer to all nine causes of action without leave to amend, holding that it was without jurisdiction to hear Davis' claims. Applying the *Covalt* standard, the Court of Appeals determined that the facts before it clearly satisfied prongs one and two, finding that the Commission (1) has undisputed authority to adopt tariffs governing applications to interconnect solar energy generating systems to a utility's grid and (2) had adequately exercised its authority by its approval of Rule 21, Rule 16, and the CREST and NEM Programs. The sole remaining determination was whether the superior court's actions "would hinder or interfere with the Commission's exercise of regulatory authority." The Court had no difficulty concluding that all of Davis's claims turned on how Edison had applied its tariffs (particularly Rule 21) and concluded that permitting a trial court to, for example, construe the sizing requirements of the NEM program (a question already before the Commission in the Davis complaint dockets) could clearly hinder the Commission's ability to exercise its authority. While the Court rested its view to some degree on the pendency of the Davis complaints at the Commission, it is more than likely that the Court would have reached the same conclusion even in the absence of any proceeding before the Commission. The court noted that Rule 21 itself gives the Commission initial jurisdiction over Rule 21 claims. While the Court overstates the legal scope of a tariff,⁶⁰ the Commission did approve Rule 21 and implemented the statutorily based CREST and NEM programs. It is not surprising that, whether grounded in notions of exclusive jurisdiction or the jurisprudence surrounding Section 1759, an appellate court would not permit a trial court to construe tariffs differently than the Commission.

⁶⁰The Court repeated the oft-found (but inaccurate) statement that a utility tariff has the force of law. That statement is true with respect to the utility but not with respect to anyone else. See Para. 82 *supra*.