

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

(In Reverse Chronological Order)

**6. *Wilson v. Southern California Edison***

234 Cal. App. 4th 123 (2015), 2015 Cal. App. LEXIS 119

The Court of Appeal (Second District, Division 4) rejected a contention by Southern California Edison that Section 1759 barred a claim by a homeowner that stray voltage from an Edison sub-station had caused her physical and emotional harm. The Court noted at the outset that Edison could raise the 1759 defense in a motion for a new trial even though Edison had not raised it earlier in the proceeding. The court observed that since Section 1759 implicates the subject matter jurisdiction of the Court, a defense based on Section 1759 may not be waived. The Court's holding is consistent with other rulings that a tribunal may not acquire subject matter jurisdiction by consent, waiver or estoppel. Edison argued that the jury's award of damages to Ms. Wilson obstructed and interfered with regulations and policies with regard to safety of electrical distribution systems by "imposing liability on Edison for stray voltage that results from Edison's compliance with those regulations" and "effectively finds that Edison was required to do something - completely eliminating stray voltage - that the PUC *does not* require." Indeed, the Commission itself had apparently offered a similar analysis in amicus brief filed in two consolidated cases filed by Ms. Wilson's neighbors against Edison based on allegations of stray voltages in the area surrounding the same sub-station affecting Ms. Wilson. The Court, however, rejected this argument (noting that it was not bound by the Commission's legal opinion with respect to the applicability of Section 1759) and noted that the Commission had not investigated or regulated the specific issue of stray voltage.<sup>63</sup> Moreover, the Court observed that:

"Without any evidence that stray voltage cannot be mitigated without violating the PUC's regulation requiring grounding, we cannot say that Wilson's lawsuit would interfere with or hinder any regulatory policy of the PUC. Therefore we hold that Wilson's claims are not within the exclusive authority of the PUC under Section 1759."

Note that *Seachrist v. SCE*, 244 Cal. App. 4th 308, 2016 Cal. App. LEXIS (January 27, 2016) which relied hearing on *Wilson*, was depublished in May of 2016.

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<sup>63</sup>Post-*Orloff*, a court rejection of the views expressed in an amicus brief filed by the Commission is rare.