

Election Quickly Improves Calif. Renewables Climate

By **Jesse Greenspan**

Law360, New York (December 3, 2010) -- It has only been a month since California voters upheld the state's landmark global warming law, A.B. 32, but that — along with the election of Jerry Brown as governor and certain favorable regulations — has already created a noticeably better climate for renewable energy development, experts say.

When Californians voted no on Proposition 23, a ballot measure that would have indefinitely delayed implementation of A.B. 32, it did not prompt an immediate wave of new renewable energy participants. Nonetheless, experts are seeing more activity from those participants already in the field.

"I don't want to overstate it, it's not like the floodgates have opened," said Keith Casto, a partner at Shook Hardy & Bacon LLP who specializes in environmental regulatory matters. "But I think the momentum is building very strongly. It's basically going to translate into a lot of projects this year that had been shelved at least for six months because they didn't know what was going to happen.

"All of a sudden, people are calling and saying, 'We want to move on these projects,'" Casto added.

Jeff Atkin, an energy partner at Foley & Lardner LLP, said renewable energy developers and the banks that finance them were nervous about the vote but that the sound defeat of Proposition 23 gave them a lot of encouragement.

"In terms of our propositions, that is just a crushing," Atkin said in reference to the 61 percent to 39 percent final vote tally. "It definitely has instilled confidence in the banks and the developers, and even the utilities, that California is going to be a leader in renewable energy and climate change going forward."

A.B. 32, otherwise known as the Global Warming Solutions Act, passed into law in 2006. It calls for greenhouse gas emissions in California to be cut to 1990 levels by 2020, a roughly 30 percent reduction from where they would otherwise be. Cuts are scheduled to start taking effect in 2012.

The law also creates a low carbon fuel standard, and requires private and publicly owned utilities selling electricity to get a minimum of 33 percent of their energy supply from renewable sources by 2020.

If successful, Prop 23 would have suspended implementation of A.B. 32 until unemployment in California had fallen to 5.5 percent or less for a minimum of four consecutive quarters — something that has happened only three times since 1970.

But now that the law is still very much in place, lawyers will have more work helping renewable energy companies through the permitting process and helping them with regulatory compliance, among other things, according to Casto.

The rejection of Prop 23 has not been the only good news for renewable energy advocates of late. Both gubernatorial candidates, Democrat Jerry Brown and Republican Meg Whitman, opposed Prop 23, but Whitman called A.B. 32 a jobs killer

and said she would suspend it for at least a year until the economy improved.

Brown, the current attorney general of California, who takes over as governor in January, is a stronger supporter of renewable energy overall, experts say.

"The attorney general's office has really been pushing action on climate change, so I think that's going to continue with him as governor," said Shannon Little, an associate at Holland & Knight LLP who focuses on environmental and West Coast land use law.

On the regulatory front, the California Air Resources Board used the authority granted to it under A.B. 32 to adopt a renewable energy standard this September, which will require all entities that deliver electricity to get 20 percent of their energy from renewable sources by 2012, 24 percent by 2015, 28 percent by 2018 and 33 percent by 2020.

"It's created a space in the market where renewable projects ... can go out there and find customers," Deborah Quick, a senior associate in Morgan Lewis & Bockius LLP's real estate and environmental groups, said in reference to the renewable energy standard.

The following month, the California Air Resources Board released a proposed greenhouse gas cap-and-trade regulation. A public comment period will culminate in a Dec. 16 public hearing, and a final version is expected to come out soon after.

Meanwhile, state legislators are purportedly planning to introduce new feed-in tariff bills, which would require utilities to hand out competitive long-term contracts to anyone who wanted to sell renewable power to the grid.

And over the last few months, the Obama administration has begun approving massive solar projects in the California desert.

Not all trends are good for renewable energy developers in California. For example, a stimulus program that awards cash grants in lieu of investment tax credits expires at the end of the year.

"Right now, the driver for solar and to a certain extent wind is the expiration of [those] grants," said Morten Lund, an energy partner at Stoel Rives LLP. "The pending expiration has caused kind of an immediate frenzy."

California furthermore has a complex regulatory environment; it must compete with other states promoting renewable energy like New Jersey and Massachusetts, and its voters passed a different proposition this November that could make implementation of A.B. 32 more difficult, according to experts.

Some lawyers think that the rejection of Prop 23 didn't make any difference in terms of the amount of projects out there.

"I did not get the sense that the industry was quaking in its boots and that a lot of stuff was on hold," Quick said. "In California and the rest of the far West, I feel like the situation is fairly stable."

Lund noted that there were many things going on "at the regulatory level, both state and federal, that affect renewable energy, and they all generally move slowly. You can't afford to put a project on hold because of the possibility of one thing hitting."

Experts agree, however, that the passage of Prop 23 would have put the industry in turmoil.

"California is shaping up to be ... a more attractive location for renewable energy projects and development," Atkin said.

--Additional reporting by Jessica Dye