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Calif. gubernatorial race outcome leaves uncertainty for carbon, renewable markets

By [Amanda Luhavalja](#)

As the race for governor in California draws to a close with election day right around the corner Nov. 2, the outcome at the polls could have a long-lasting impact on the state's climate change and renewable legislation goals.

In September, Democratic candidate Attorney General Jerry Brown reaffirmed his opposition to Proposition 23 and blasted Republican candidate Meg Whitman for her failure to support the full implementation of A.B. 32.

Proposition 23 would suspend A.B. 32, the Global Warming Solutions Act of 2006, until unemployment reaches 5.5% for a full year. A.B. 32 provides the authority for implementing California's renewable portfolio standard and also authorizes the creation of a market for greenhouse gas reduction credits.

"Attempts to shelve the state's landmark law to combat climate change are regressive, short-sighted and counter-productive, and I urge Californians to vote no on Proposition 23," Brown said in a Sept. 20 news release. "While Texas oil pumps millions into the yes campaign, Meg Whitman continues to flip and flop her way out of taking a real stance on this harmful measure."

According to a statement on Whitman's website, she supports the state's RPS and believes that promoting clean sources of energy will generate "green tech jobs" and produce a cleaner environment. While Whitman has said she is opposed to Proposition 23, she has indicated, however, she is in favor of a one-year moratorium on A.B. 32.

"My plan is to suspend A.B. 32 for at least one year while we develop the sensible improvements the law badly needs to protect the jobs of hard-working Californians while improving our environment," Whitman said in a Sept. 23 news release.

Amid the pre-election rhetoric from both sides of the aisle, market players believe it might be too soon to tell what impact the upcoming gubernatorial elections may ultimately have on the future of California's renewable energy markets.

"The key thing in California is Prop 23. California is definitely a litmus test, but not a fait accompli for the rest of the country," Andrew Fielding, president at GT Environmental Finance said. "If A.B. 32 goes through, will it [create] an active carbon market? Not necessarily. It is more symbolic in nature."

"Let's get into the [Western Climate Initiative] and see how it goes, and the rest of the country should jump in," Fielding added.

If A.B. 32 is suspended, California may not be able to participate in the Western Climate Initiative, a collaboration of seven U.S. states and four Canadian provinces with the goal of reducing greenhouse gas emissions by 15% below 2005 levels by 2020 across the region through a regional cap-and-trade program.

"I am concerned with both candidates' approaches to the renewable energy markets, but how much impact the governors will have on the rulemaking process is yet to be seen," agreed John Friskel, renewable energy broker with Clear Energy Brokerage & Consulting LLC.

Brown's Clean Energy Jobs Plan, based on the idea that California has the ability to produce 1.3 million MW of renewable power for itself, calls for developing 20,000 MW of new, in-state renewable power by 2020. "Brown is a better bet for renewables," Fielding said.

"Jerry Brown is seen as a friend of renewable energy, but he is also very pro-union. Brown's union stance could translate into limiting the importation of out-of-state power, which would increase the cost of renewable compliance obligations (both renewable energy credits and bundled power)," Friskel said.

In the meantime, Seth Hilton, partner at Stoel Rives LLP said in an interview that at the present time, rulemakings remain tied up with two different agencies: the California Public Utilities Commission and the California Air Resources Board, or CARB.

On Sept. 23, CARB voted unanimously to implement regulations requiring utilities to obtain 33% of the electricity sold in the state from renewable energy sources by 2020.

CARB said a phase-in approach provides interim targets for renewable energy, setting a 20% requirement for 2012-2014; 24% for 2015-2017; 28% for 2018-2019; and 33% for 2020 and beyond. California already has a law requiring 20% by 2010 for investor-owned utilities. The CARB regulation applies to all electricity providers, including investor-owned utilities and publicly owned utilities.

Most of CARB's order adopting the 33% standard concerns how compliance will be monitored through a system of renewable energy credits and certificates. The measure, however, leaves open-ended the issue of how many tradable renewable energy credits, or TRECs, utilities can use to meet the state's RPS.

"Depending on who is elected governor, the new governor may seek to suspend the ARB's implementation of the regulation, or to have it modified," a Sept. 29 research note from Stoel Rives said.

"Meg Whitman has gone on record vowing to suspend A.B. 32, which would likely eviscerate the 33% RPS issued by CARB who used A.B. 32 as a vehicle to pass the 33% decision. But in the run-up to the election she has softened her stance and is now opposed to Prop 23. This is confusing as they seem to me as two mutually exclusive opinions," Friskel said.

"A.B. 32 gave ARB the authority to mandate the 33% RPS," Hilton said. "If Whitman is elected, and A.B. 32 is stayed," this will also stay the ARB decision, Hilton said.

If Jerry Brown is elected, he will be concerned about the ARB decision as well, and the importation of out-of-state power, Hilton added.

"The unions (who want jobs to stay in-state), don't like that and Brown will be listening to that," Hilton added.

In the meantime, on Aug. 25, the CPUC put forward a proposed decision that would make it easier for investor-owned utilities to count out-of-state renewable energy production toward the state's 20% renewable portfolio standard. Under the proposed decision, investor-owned utilities could meet 40% of their renewable requirements through the use of TRECs.

In March, the commission authorized the state's utilities to meet up to 25% of the RPS requirement with TRECs, but it then stayed that decision less than two months later after complaints by utilities and power producers saying that the rule was too strict and that it would discourage renewable energy development throughout the West and had already created uncertainty for all market participants.

The CPUC recently postponed its proposed decision for consideration on the unbundled TREC issue from Oct. 14 to Oct. 28.

In the end, "...[t]he industry sentiment is that Meg Whitman equals lower Calif. compliance REC prices and Jerry Brown equals higher Calif. compliance REC prices. But the devil will be in the details," Friskel said.

"The only way out of this mess is for the legislature to pass the 33% RPS," and then decide how TRECs will be used, Hilton said, pointing to the likelihood of legislation being passed next year with the new governor in office.

"Things are very much up in the air and will continue to be up in the air no matter who is elected governor," Hilton said.