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Robin Bravender, E&E reporter

Sen. Jeff Bingaman (D-N.M.) is writing legislation to cap emissions from the utility sector, an approach that is gaining traction in Washington amid fresh concerns about what carrots might be dangled in front of power plants as incentive to sign on.

The Senate Energy and Natural Resources Committee chairman said yesterday that he has a bill that would cap greenhouse gas emissions from power plants. "I've done some work on that, but I haven't introduced anything," he told reporters, adding it has some "significant differences" from the Kerry-Lieberman cap-and-trade measure.

Although Bingaman said he was not sure how much further he will go with the draft bill, the utility-only approach could be the most feasible way to set a limit on carbon dioxide emissions this year, given the limited time left on the legislative calendar and November's elections looming. White House chief of staff Rahm Emanuel has said the approach would be welcomed when President Obama meets with a bipartisan group of senators today to discuss the issue.

Bingaman, who has downplayed the chances of an economywide climate bill passing this year, said he will wait before introducing his bill -- if at all. "I think it would depend on how much support there would be for that," he said. "I don't want to just introduce bills in order to add to the list of bills that have been introduced."

A utility-only cap shepherded by Bingaman may have a better shot at winning bipartisan support than if it were championed by Sen. John Kerry (D-Mass.), a co-sponsor of a Senate cap-and-trade climate bill who became a partisan magnet after his failed bid during the 2004 presidential contest.

"I've talked to him about it and we've talked about some other variations on that," Kerry said yesterday. "It may be possible to find a way to do something intelligent." The bill from Kerry and Sen. Joe Lieberman (I-Conn.) would set emission caps on the utility, manufacturing and transportation sectors.

Majority Leader Harry Reid (D-Nev.) "welcomes all creative proposals that will help pass comprehensive clean energy legislation," a Democratic aide said.

Bingaman is also the lead author of a bipartisan energy bill that cleared the Energy and Natural Resources Committee last summer. At the time, it was thought that bill would be combined on the floor with cap and trade, but now the measure may go to the floor on its own. That bill -- which cleared the Energy Committee by a 15-8 vote -- includes a renewable electricity standard and offshore drilling provisions but no cap on carbon dioxide emissions. Bingaman has also worked across the aisle on previous energy bills.

"I think that there is no doubt that Senator Bingaman enjoys the widespread confidence of the energy sector, the manufacturing industries, as well as progressive interest groups that want to develop reasonable legislation," said Scott Segal, an industry attorney at Bracewell & Giuliani. "While Senator Kerry has made at times heroic efforts to be open to a broad spectrum of views, Senator Bingaman has a track record of understanding the unique circumstances of the energy sector."

Asked whether there are any political advantages to Bingaman taking a lead role on the utility-only approach, Kerry said, "Senator Bingaman has always had a lead role on this; he's chairman of the Energy Committee. We've always included him as -- he's one of the key leaders on this thing -- I mean, he's very helpful, obviously, but I think it depends again on what the total picture is."

Kerry said he does not expect Bingaman to introduce the bill. "I'm expecting Harry Reid to come out with some kind of a bill," Kerry said. "And Jeff may come up with some proposal, there are a lot of proposals, and Harry Reid's going to sort of pick between them."

"But I think any proposals from Jeff or anybody else right now, that move you in the direction as I've said, you know, the polluter pays, pricing carbon principle is the key," Kerry added. "There are a number of ways of doing it. I'm not locked in to any one way. I just want to get it done."

Concerns about political tradeoffs

Although addressing the electricity sector may be the route to setting a price on carbon dioxide emissions, that path is not without potholes. Because not every sector will be covered by a carbon cap, environmentalists worry about possible incentives that may be necessary to sweeten the deal for the power industry.

Utilities are divided on the approach. Some say a cap on just their sector will offer certainty and is better than none at all; others are reluctant to go it alone. The Edison Electric Institute -- a trade group whose members represent about 70 percent of the U.S. electric power industry -- has thrown its support behind economywide bills but has not publicly taken a position on a utility-only approach.

Getting the industry's buy-in could require some political horse trading, which may force supporters of a climate bill to pick between getting a cap on carbon emissions or allowing U.S. EPA to plow ahead with aggressive regulations.

"There's concern that they would want something in return for being the only sector that's under a mandated cap," said Joe Mendelson, director of global warming policy at the National Wildlife Federation.

For example, Mendelson said, it would be a nonstarter for environmentalists if a climate bill included regulatory relief for other pollutants, like hazardous air pollutants or soot- and smog-forming pollution.

Some utility representatives say they would push for additional measures in a climate bill aimed at offering more regulatory certainty.

Duke Energy Corp. CEO Jim Rogers co-wrote an [op-ed](#) last week in *Politico* with Eileen Claussen, president of the Pew Center on Global Climate Change, urging utilities to pave the way with a national emissions cap.

Sensible policy, they wrote, must "clarify federal emissions regulations so electric utilities can shift to cleaner and more efficient power plants without the uncertainty of patchwork regulatory approaches and the threat of litigation."

Jeff Holmstead, an attorney at Bracewell & Giuliani who represents utilities, said the industry will want regulatory certainty from a climate bill. "If the bill only deals with CO2, then that doesn't help them," he said, because there is a "whole series of other regulatory requirements that EPA is threatening that could fundamentally affect the way that utilities operate." Holmstead served as EPA's air chief during the George W. Bush administration.

Those pending EPA rules include a national air quality standard for ozone, an upcoming replacement for a Bush-era standard limiting smog-forming nitrogen oxide and soot-forming nitrogen dioxide from power plants, and plant-specific limits on hazardous pollutants like mercury. EPA is also working on regulations to curb greenhouse gas emissions from industrial facilities, which many industry representatives want Congress to pre-empt through legislation.

Duke spokesman Tom Williams said it is premature to discuss what incentives the utility industry would want to back a sector-specific cap. "It's a bit premature to speculate on that," he said. "I think it's a fair discussion. There are a lot of issues we would like to discuss."

Additional measures could be added to offer regulatory certainty, Williams said. "If the regulations do come down, then they may be litigated. But if you have it wrapped up into one bill, we can have certainty on carbon ... and you remove other uncertainties. We're not asking for leniency at all."

Clean Air Watch President Frank O'Donnell said there is "grave danger that some utilities will seek to interfere with efforts to clean up dirty power plants.

"This could subject the public to added years of life-shortening pollution," he said. "We unequivocally oppose trading off public health protections in order to buy utility support for a weak climate bill."

Graham won't attend White House meeting

One of the leading Republican negotiators on energy and climate legislation won't be attending today's meeting at the White House with President Obama.

Sen. Lindsey Graham (R-S.C.), who drafted legislation with Kerry-Lieberman but later dropped out as a co-sponsor, said yesterday that he will miss the meeting because it conflicts with the Armed Services Committee confirmation hearing for Gen. David Petraeus, who was nominated to take over the top U.S. military post in Afghanistan.

Graham said he asked the White House to move the meeting but was refused. "I'm just not going to run down to the White House and do that meeting and miss the Petraeus thing," he said.

"It's pretty clear that after their caucus there's divisions about what to do with the oil spill legislation and how much carbon pricing you can attach to it," Graham added, referring to last Thursday's Democratic caucus meeting. "So it seemed to be a long way away from consensus on their side, much less our side."

Democrats slated to attend today's meeting are Reid, Bingaman, Kerry, Sens. Max Baucus of Montana, Mark Begich of Alaska, Barbara Boxer of California, Sherrod Brown of Ohio, Maria Cantwell of Washington, Tom Carper of Delaware, Byron Dorgan of North Dakota, Blanche Lincoln of Arkansas, Jeff Merkley of Oregon, Bill Nelson of Florida, Jay Rockefeller of West Virginia and Debbie Stabenow of Michigan. Lieberman, who caucuses with Democrats, is also expected to attend.

Republicans invited to attend include Sens. Lamar Alexander of Tennessee, Susan Collins and Olympia Snowe of Maine, Judd Gregg of New Hampshire, Richard Lugar of Indiana, Lisa Murkowski of Alaska and George Voinovich of Ohio.

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