

F I F T E E N

Sierra



IN MICHAEL ONDAATJE'S NOVEL *The English Patient*, a character named Kip works for the British army as a sapper, performing the work of defusing unexploded bombs and land mines. The job calls for patience, nerves, and a bit of luck. If coal plants are planetary time bombs, then by all accounts the best sapper in the movement to defuse them was a Sierra Club employee named Bruce Nilles, who initiated and led the club's national coal campaign out of a small office off Federal Street in Madison, Wisconsin.

While still an undergraduate at the University of Wisconsin, Nilles had written a paper about how to clean up the local Charter Street coal plant. Nobody took the idea seriously, but even after leaving the state, the Charter Street plant remained in the back of his mind. In 2002 Nilles signed on with the Sierra Club and became the sole staffer for the club's coal campaign, focusing initially on Illinois.

Although it was not apparent at the time, this one-state effort, which eventually became a nationwide project, marked a milestone in the history of the Sierra Club. For most of the

116 years of its existence, the club had been a fairly genteel organization of nature lovers that concentrated its energies on saving wild, unspoiled places like the Grand Canyon or California's Hetch Hetchy Valley. That changed with the arrival of firebrand David Brower as president and with the concurrent expansion of the environmental movement in the 1960s and 1970s, during which the club's focus widened accordingly to include pushing for federal legislation that benefited not just remote and scenic areas but the environment as a whole. But even Brower had never taken on a challenge as big as the all-out mobilization to stop 151 coal plants across the United States. Considering the potential of those plants to push the global climate into dangerous warming, the stakes of the campaign were no less than the fate of the planet itself.

Among the major groups that make up Big Green, the Sierra Club was the only organization to develop a strategy on coal that fully matched the level of alarm being sounded by climate scientists. By 2007 James Hansen and his colleagues were insisting that coal needed to be completely phased out by 2030. Accomplishing that objective didn't just mean encouraging efficiency, pushing for clean power, or raising the cost of fossil energy, though all of those were important measures. It meant blocking each new coal-fired power plant from going beyond the drawing boards, then moving on toward phasing out every existing coal plant. An obsessive focus on coal plants was what Bruce Nilles brought to the Sierra Club, and it was what set the Sierra Club apart. At any given time from 2007 onward, the club was directly involved in regulatory interventions or lawsuits affecting dozens of proposed projects across the country.

The industrial heartland was an appropriate place to start. The region, including Ohio, Illinois, Indiana, Missouri, Pennsylvania,

and Michigan, has the most intensive coal generation in the country. No state burns more coal than Ohio. Indiana comes in second, Illinois fifth. Erik Shuster's list of 151 proposed new coal plants included sixteen plants in Illinois alone (largely due to misguided efforts by the state legislature to use coal as a means of economic development), and twenty-one more plants in Ohio, Indiana, Michigan, Missouri, and Pennsylvania.

Even if no new coal plants were built, citizens in the Midwest already pay a heavy price in health effects for the region's reliance on coal. Of the twenty-four thousand people estimated to die prematurely in the United States due to fine particles from power plants, a third are in the six industrial heartland states.

In Illinois, the first target of Sierra's coal work, the club eventually was able to claim victory against all but five of the sixteen proposed plants. It was a remarkable accomplishment, considering that the state's political establishment, led by Governor Rod Blagojevich, was solidly behind coal. In 2002 Illinois had created a Coal Revival Program to support new coal-fired plants. In July 2003 the state expanded its support for coal with \$300 million in state-backed bonds to help finance the construction of "advanced technology" coal-fueled projects.

One of the toughest coal plant fights was in Franklin County, where EnviroPower had already started construction of a 600-megawatt plant when a U.S. District Court judge ruled in favor of Sierra's objections to the air permit. To make its case at the appellate level, EnviroPower hired Harvard celebrity lawyer Alan Dershowitz, who accused Sierra of undermining national security. "The Sierra Club's latest salvo to stop all coal-fired power plants in the Midwest threatens America's energy independence," said Dershowitz.

Despite the histrionics of Dershowitz, Sierra prevailed in the U.S. Seventh Circuit Court of Appeals in Chicago, and EnviroPower was forced to abandon the facility. Even more controversial was the Taylorville Energy Center, which had managed to gain the support of several environmental groups because it planned to use the new integrated gasification combined cycle (IGCC) technology. The groups that supported the project, including the Citizens Utility Board, the American Lung Association, and the Illinois Clean Air Task Force, believed that implementing IGCC technology at a commercial scale was a step toward the Holy Grail of climate-friendly coal usage. Sierra and most other groups opposed the project, since the developers had no plans to actually capture and store the carbon dioxide emissions.

Even as Sierra's coal work expanded beyond the Midwest into Kansas, Florida, Nevada, and other states, Bruce Nilles continued pursuing his long-standing goal of closing Madison's three old coal plants. In 2005 Sierra had kicked off a campaign to shut down the largest and dirtiest of the trio, Madison Gas & Electric's Blount Street facility, beginning with a citywide educational campaign. More than two hundred people showed up at a City Council meeting demanding closure. Soon, Madison Gas & Electric announced that it would cease burning coal at that site in 2010, and Sierra shifted its work to the second-biggest source of pollution, the Charter Street plant.

For two years, Nilles and others negotiated with officials from the University of Wisconsin, but when they realized that the talks were failing to make progress Sierra began investigating the plant's compliance with air-quality regulations. Finding multiple violations, Sierra sent the state of Wisconsin a letter informing it of the problems in November 2006. After

another round of stalling by the utility, Sierra sued both the university and the state in federal court. The suit revealed that the operators had significant compliance problems statewide and no oversight by the Department of Natural Resources. When U.S. District Court Judge John Shabaz ruled in favor of Sierra, the state finally agreed in late 2007 to reduce coal use at the Charter Street plant.

During 2007 and 2008, the number of proposed coal plants in which the Sierra Club was involved multiplied across the country. As described in chapter 7, the fight over the expansion of the Holcomb coal plant in Kansas was the most significant of these, but at the same time the Sierra Club, together with local allies, was involved in regulatory proceedings or litigation against plant proposals in Texas, Missouri, Florida, Kentucky, Arizona, Oklahoma, Iowa, Washington, Utah, Georgia, Illinois, Wisconsin, Montana, Nevada, Michigan, Louisiana, Arizona, and other states.

In 2008 Sierra upped the ante from opposing individual coal plants to organizing against an entire company, Houston-based Dynegy Inc. Across the United States, Dynegy, together with its joint venture partner LS Power, was planning more new coal plants than any agency or utility. If built, the plants would add 44 million tons of carbon dioxide to the atmosphere each year. Branding Dynegy “America’s Coal-Fired Polluter Number 1,” Sierra kicked off its campaign in late February with mass call-ins to Dynegy headquarters originating from twenty states. In May, a hundred Sierra activists showed up at Dynegy’s annual meeting and delivered 10,000 letters and emails to the company’s CEO, Bruce Williamson, urging the company to redirect its investments toward cleaner sources of energy. The campaign quickly hit a nerve with Williamson, who complained that Dynegy was

being unfairly picked on. It probably didn't help Williamson's morale that he had also just been picked as one of five executives to receive Fossil Fool of the Year awards.

Dynegy was a ten-year-old power company that had already had one near-death experience, getting caught up in charges of price fixing and other fraudulent practices during the California electricity crisis of 2000 and again in the wake of the Enron debacle in 2002. Williamson, who came on board to replace founder Charles Watson, was credited with saving the foundering company by exiting natural gas and moving into coal. That move placed the company on a collision course not only with Sierra but with local groups in over a half-dozen states. Before the launching of the Sierra Club campaign, five Dynegy projects had already bit the dust in Illinois, Oklahoma, Virginia, South Carolina, and New Jersey. The remaining six were the Longleaf plant in Georgia, the Power Elk Run plant in Iowa, the Midland plant in Michigan, the Plum Point plant in Arkansas, the Sandy Creek plant in Texas, and the White Pine plant in Nevada.

Meanwhile, Dynegy had also come under pressure as one of five energy companies subpoenaed in 2007 by New York attorney general Andrew Cuomo under New York State's Martin Act, a 1921 securities law that gives the state broad access to corporate financial records. The purpose of Cuomo's investigation was to determine whether Dynegy and the other companies were adequately informing investors about the financial risks connected to their emissions of global warming gases. In October 2008 Dynegy agreed to disclose information about how global warming might affect its business practices, including explaining the potential consequences to investors if federal rules are adopted to limit carbon dioxide emissions. Dynegy

also agreed to report its efforts to mitigate carbon dioxide emissions, estimates of its financial liability in settling possible lawsuits related to climate change, and the potential impact of climate shifts on its ability to generate electricity.

On top of the pressure from activists and regulators came the worldwide financial crisis and economic recession, which looked likely to suppress demand for new power plants. During Dynegy's regular report to financial analysts in November 2008, Williamson admitted that "very little new power plant development is going on in the country and very little can be economically justified in the current environment." He hinted that economic conditions would likely slow the demand for power in the short term.

The following month, Williamson announced a major re-evaluation in Dynegy's coal plans. Citing the combination of economic problems and hardening opposition, the CEO said that Dynegy had decided to reassess its involvement in all six of the projects targeted by Sierra and other groups. In January 2009 Dynegy announced it was dissolving its development venture with co-developer LS Power. The official position of LS Power was that it intended to continue developing the projects, but opponents noted that the company, which had never built a coal plant, was less likely than Dynegy to move the projects forward. Sure enough, LS Power began canceling projects: Iowa's Elk Run plant in January 2009, the White Pine project in Nevada in March 2009, and the Midland plant in Michigan in April 2009.

While Sierra's organizers and some of its attorneys worked on the Stop Dynegy campaign, another legal team pursued a petition with broad potential implications aimed at forcing regulators to include the Supreme Court's ruling in *Massachusetts v. EPA*

in all power plant siting decisions. The focus of the petition was the proposed Deseret Plant in Utah, which was subject to federal jurisdiction due to its siting on the Uintah and Ouray Indian reservation. Sierra attorneys David Bookbinder and Joanne Spalding argued before the EPA's Environmental Appeals Board that *Massachusetts v. EPA* required new plants like Deseret to use the "best available control technology" to minimize carbon dioxide emissions. In a ruling that sent shock waves through the utility industry, the appeals board agreed with Sierra, a decision that temporarily froze coal plant applications across the country while EPA developed regulations for implementing carbon dioxide controls.

In the spring of 2009, Bruce Nilles picked up stakes and moved the office of the Sierra Club's coal campaign to Washington, D.C. Having been voted Hero of the Year by the readers of the online magazine *Grist* and one of a hundred "Agents of Change" by *Rolling Stone*, Nilles had become something of a celebrity within the environmental movement. With the move to Washington and the arrival of the Obama administration, the focus of Sierra's coal work was now shifting toward national regulation and legislation. Nilles believed that the most promising avenue for action derived from the Supreme Court's decision directing the Environmental Protection Agency to begin regulating greenhouse gases. While the Bush administration had dragged its feet on implementing the decision, under Obama's EPA secretary Lisa Jackson the agency moved quickly to make a determination that carbon dioxide and other greenhouse gases "may be reasonably anticipated to endanger public health and welfare." That determination was crucial to taking further steps toward limiting carbon dioxide from coal plants, and Sierra mobilized its members to push the EPA toward an aggressive

implementation of the finding, packing public hearings in Arlington, Virginia, and Seattle, Washington.

In Seattle a boisterous crowd of about two thousand people turned out for the event. Banners hung from the roof of the convention center and hundreds of people rallied outside, while inside an array of speakers turned a dry hearing into something closer to a celebration. Side by side with lawyers and technical experts who provided detailed analyses of the Clean Air Act were moms who brought children to the podium as “visual aids,” students who testified wearing garbage bags, and activists from Appalachia who vividly described growing up near streams that ran black with coal dust. The hearing showed Sierra at its best—an organization capable of merging the talents of legal and scientific “paper jammers” with the efforts of passionate volunteer activists.

The club had much to cheer, having played a central role in a movement that had accomplished the seemingly impossible task of blocking coal plants by the score. The question, of course, was whether the movement could maintain that momentum, or whether the coal industry would find a way to regroup. One thing was clear: if the battle was shifting to Washington, the coal industry, with its immense lobbying resources and strong political connections, would have a home field advantage against Sierra and groups that drew their strength primarily from the grassroots. Under the Bush administration, there had been every reason for the grassroots movement against coal to work primarily at the local and state levels. Now Sierra and other groups had to move to the next level without losing their focus and becoming isolated from their base.

