Urban and Industrial Environments
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Power to the People? Deregulation and Environmental Justice Energy Activism

On February 26, 2002, the New York State Energy Board held hearings in Manhattan and Brooklyn. At issue was the state energy plan, drafted by the New York State Energy Planning Board which is intended to provide strategic direction and energy policy guidance.[1] The board, through the plan, coordinates New York State government activities and responses to energy issues, including the siting of power plants. Under state law, the plan is supposed to be revised every four years, with a participation process conducted through public hearings. The midday Brooklyn hearing, which took place in the main auditorium of the Brooklyn Museum of Art, was almost empty, with an audience of about 20 in a room with a capacity of over 1,000 people. Elizabeth Yeampierre, executive director of UPROSE, the oldest Latino social service agency in Brooklyn and a community-based organization active on environmental justice issues and community development in Sunset Park, was one of the few people there representing a neighborhood perspective. Yeampierre, a Puerto Rican woman in her forties, got up to the microphone and blasted the state energy board representatives sitting on the stage for organizing public hearings at a time when community members, especially low-income working people, could not attend. She critiqued the board for not addressing the power plant siting issue, which she called an example of environmental racism, and invited them to hold a hearing at night in Sunset Park, where there were three power plants proposed. Yeampierre promised to monitor the plan and the process and, if need be, to file lawsuits and apply community pressure on the power plant siting issue.[2] Members of the audience reacted sharply to Yeampierre's testimony—some for bringing life to a previously dull meeting, others visibly uncomfortable with her tone and statements.

The next day, at the trendy W Hotel in midtown Manhattan, I took an elevator up to the hotel lobby and walked through it to a small conference room packed with businesspeople, lobbyists, and government representatives, all of whom seemed to know each other and who were there to monitor the future direction (and possible profits) of the state's energy policy. The hip hotel scene was at odds with the conservative suits inside, engaged in lobbying rituals in the air-conditioned room. The "suits inside," largely male and predominantly white, greeted each other with an easy familiarity. To an uninitiated outsider, it felt like a lobbyist's convention or the hallway outside the Albany legislature during a late-night budget negotiation. There were no representatives from community-based organizations testifying that day, although there were a few people from citywide and national environmental and public interest groups. There were no Elizabeth Yeampierres to stir the crowd with anything other than business as usual.

In both the Brooklyn and Manhattan hearings, at the museum and at the trendy hotel, the location and the physical space reinforced a message: no outsiders to the process need attend. Although it claimed to be a public hearing where ordinary citizens could weigh in, the culture of the hearings contradicted this claim to an open and democratic process. Both hearings evoked clubby exclusion and insider politics, despite the presumption that these were public hearings to deal with important energy policies with large environmental and public health implications in local communities.

This chapter addresses the claims made by environmental justice activists like Elizabeth Yeampierre that energy policy, and particularly the issue of power plant siting, represents a salient example of environmental racism. It also examines the culture and the politics of energy policy decision making. I look at issues of race and power by closely examining energy policy. At their most basic levels, power and empowerment are metaphors for the ability to do things, either by oneself or by making someone else do something (through force). Power as a political concept has been well explored for centuries by theorists such as Thomas Hobbes and John Locke. More recently, slogans such as "Power to the People" and "Black Power" have been used by proponents of democratic social movements seeking greater inclusion into previously closed political and cultural systems, defined by class or race exclusion.

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Contemporary struggles over energy policy have racial dimensions, especially when viewed through the framework of environmental racism and the environmental justice movement, which links local and community-based activism with broad-based energy activism at larger scales—citywide, regional, national, and global. It analyzes how energy is racialized through the politics of energy regulation and deregulation and of distribution (Sze 2005).[3] Environmental justice energy activism also emerges as a result of political discontent with intensifying trends regarding the expansion of capital with a simultaneous decrease in government intervention and regulation. These dimensions can be most sharply seen, and most vehemently debated, in the negative costs of energy systems, manifested through environmental pollution and their disproportionate impact on poor and minority populations. Community-based activism against power plant siting is a direct result of an increased number of proposed plants under conditions of electric utility deregulation. Community responses to these racial dimensions are exemplified by environmental justice campaigns against the siting of power plants in California and New York State. The case study in this chapter is about a citywide community-based coalition, Communities United for Responsible Energy (CURE), which organized in 2001 in response to the siting of power plants in low-income and minority communities in the wake of electricity deregulation in New York City.

I draw from historian David Nye's approach to analyzing energy in *Consuming Power: A Social History of American Energies* (1998), in which he argues that energy constitutes a "social world." Energy systems are results of historical negotiations between people alongside technological change. The social world is a set of social constructions of home, factory, or the city that are "inextricably connected to a dominant energy system. Machines are extensions of human lives—someone makes it, markets it, opposes it, uses it, and all interpret it" (5). Nye focuses on how people shape technology, emphasizing human choice, agency, and cultural difference. The focus here is not on the scientific or technological dimensions of energy systems (the dominant mode in which energy is usually discussed) but how energy system choices are given social and political meaning, contested, and culturally shaped (Tatum 2000).

I begin with a general overview of energy history and development and the emergence of the old and stable regulatory system that governed how

utilities operated. This history contextualizes contemporary debates about changes to the system in the form of deregulation. This approach further illuminates the changing nature and power of corporations at the beginning of the twenty-first century, particularly in the debates about public and private power and the role of the state in mediating the influence (and corruption) of corporations through regulation. I also highlight the relationship of racial politics to changing energy systems in the context of deregulation. In doing so, I show how and why energy policy and environmental justice analyses are linked. I look at the effects of deregulation on local communities and communities of color in the California energy crisis and then turn to the New York City case study of activism against power plant siting.

Environmental justice energy activism reflects the specific interpretive responses of people of color to the implementation of energy systems that are particularly destructive toward racial minorities in the U.S. context. The burdens of large-scale energy production have destroyed myriad communities in many nations across the world, whether energy is generated by coal (on the Navajo and in Appalachia), oil (Shell's activities in Nigeria, Texaco's in Ecuador), or hydropower (dam projects displacing hundreds of thousands of people in Quebec, India, Chile, Brazil, and China). At the same time, the international fossil fuel lobby is fighting the Kyoto Protocol and other international attempts at regulation.[4] A changing climate raises sea levels, alters precipitation and other weather conditions, threatens human health, and harms fish and many types of ecosystems, and the adverse impacts fall heaviest on the poor in the United States and the global South.[5]

There is a growing awareness of the interconnectedness of global climate change and environmental justice issues. To press the administration to adopt Kyoto, the Environmental Justice and Climate Change Coalition (EJCC) formed. The EJCC is a coalition of twenty-eight U.S. environmental justice, climate justice, religious, policy, and advocacy groups that formed to pressure the Bush administration and Congress on climate change and the Kyoto Protocol. The group's 2002 fact sheet stated, "People of color are concentrated in urban centers in the South, coastal regions, and areas with substandard air quality. New Orleans, which is 62 percent African-American and 2 feet below sea level, exemplifies the severe and disproportionate impacts of climate change in the

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U.S. . . . Wealthy homeowners are able to move, whereas low-income people (who usually rent) cannot. Also, low-income people typically lack insurance to replace possessions lost in storms and floods. Only 25 percent of renters have renters insurance."[6]

I am not suggesting the burdens of energy production are unique to people of color in the United States. However, I suggest that in the U.S. context, race and racism are useful frames for understanding how pollution harms from the energy sector are socially distributed, as well as the larger political meaning of community and environmental justice activist responses to changes in energy policy. These examples of activism are a significant challenge to energy companies' attempts at unilateral decision making on energy issues to promote a pro-business government ideology, exemplified through deregulation.

Energy: Economic and Environmental Effects

The United States consumes far more energy than any other nation and leads in per capita consumption. Energy has been a crucial force in the shaping of American capitalist development and history and its political ideologies (Nye 1998, Melosi 1985, Jacobson 2000). Historian Martin Melosi describes general periods of American energy history, characterized by two interlinked beliefs: the inexhaustability of supply and cheapness of fossil fuels.[7]

Historians have shown how the energy industry is an excellent prism through which to understand the changing nature of the corporation and its relationship to the state. From the mid-nineteenth century onward, energy has been a big business and corporate enterprise. During the second half of the century, coal, oil, and electricity came under the control of large corporations, closely related to the growth of big business and the merger wave at the end of the ninetieth century.[8] The degree to which government regulates industry and the nature of the energy market have been contested by producers, consumers, and regulators for well over a century, and the lack of a national energy policy has been a persistent feature of American energy history (Melosi 1985). Energy companies have also been the perpetrators of some of the largest and most spectacular corporate frauds and failures in American history, from the fall of the House of Insull in 1932 to the Enron scandal in 2001.[9]

The electric utility industry grew rapidly in the twentieth century. By 1970, electric utilities were the largest industry in terms of capital assets in the United States. This created a host of new problems since energy systems are also major contributors to environmental degradation.[10] Emissions from electric power plants generate about 33 percent of all carbon dioxide emissions. Worldwide, fossil fuel power plants produce about 60 percent of all greenhouse gas emissions. Most harmful are older coal-fired steam plants, which produce a large volume of air pollution, particularly sulfur oxide and particulate matter (fine particle pollution). Three decades of health and environmental research have led to increasing state and federal legislation, most notably the historic 1970 Clean Air Act, the comprehensive federal law that regulates air emissions from area, stationary, and mobile sources. This law authorized the U.S. Environmental Protection Agency to establish National Ambient Air Quality Standards (NAAQS) to protect public health and the environment. By the 1990s, a large volume of data from public health practitioners and researchers had begun to document the relationship between electricity production and environmental degradation and their human health effects.

Electricity Overview

Electricity services constitute big business in the United States.[11] Electricity is a unique commodity in several ways because it must be provided on demand, which means that it cannot be stored or saved. There is also complicated jurisdiction over it (local, state, and federal). The electricity service industry provides four separate but related functions: power generation, transmission, local distribution, and, most recently under deregulation, retail services such as meter, billing, and energy efficiency.[12]

Almost immediately after Faraday's creation of an electric motor in 1821, which formed the basis of electromagnetic technology, practical and commercial applications were sought to harness the power of electricity. Thomas Edison's utility business, established in the financial district of New York City in 1882, consisted of steam engines, generators, and a wiring network designed to illuminate electric lights in restaurants and shops.[13] Samuel Insull, Edison's private secretary and later vice

president of GE, bought out rival firms, consolidated their equipment, and supplied power to an increasingly large base of users with cost-effective turbine generators (McDonald 1962).

In the wake of rapid consolidation within the electrical industry, the major debate at the end of the nineteenth century was the role of the public sector versus that of the private in delivering power. This debate was not confined to energy, but extended to most municipal systems, such as garbage, transportation, water, and sewage systems.[14] The debate was particularly intense between the 1890s and 1910, as the number of home rule systems (publicly owned power) increased. But the tide soon turned. In 1926 alone, there were more than 1,000 mergers, in many cases involving municipally owned facilities selling out to private companies (Melosi 1985).

In the early twentieth century, electricity systems and use grew rapidly. The number of private residences served increased from 6 million to 20 million. Electricity had a widespread impact on culture through the adoption of electrical appliances, in propagating popular culture through radio and movies, and as objects of consumption (de la Peña 2003, Platt 1991, Nye 1990). By 1929, the United States produced more electricity than the rest of the world combined. Other entrepreneurs vertically integrated the electrical industry, which grew from a small number of telegraph supply firms in 1870 into a $200 million industry by 1900. Utility holding companies revolutionized the industry, not by producing or distributing commodities or service but by acquiring many smaller operating companies through control of their stock (Melosi 1985).

Regulation emerged historically as a reaction to unbridled corporate power, particularly the large-scale growth of utility holding companies and their corporate machinations. Abuse in the industry was great, whether through blatant profiteering, stock manipulation, or pyramiding, as exemplified by the 1932 fall of the House of Insull. The main political debate was whether to municipalize energy or to regulate.[15] In 1907, states began to regulate the rates charged to retail customers, and by 1935, the federal government began to regulate wholesale electricity rates through the Public Utility Company Holding Act (Brennan et al. 1996). The hybrid that developed by the 1930s, private companies and public regulation, is what energy historian Richard Hirsh (1999) calls

the "utility consensus." Regulators assumed central importance as mediators of conflicting interests.[16] Government regulation won, with the support of the utility companies.[17]

Regulation firmly established the notion that utility companies constituted natural monopolies. Natural monopolies made sense in principle because the transmission and distribution costs of service were high and inflexible. Thus, competition was seen as duplicative and inefficient.[18] The consensus also legitimated the utilities because government oversight meant that they were seen as permanent, stable, and safe investments (Hirsh 1999).

Race and Energy

Given the history and the large scope of energy and electricity development, along with its associated benefits, how does any social group make particular its claim to energy policy? What does energy (or electricity) have to do, if anything, with race? Generally energy is widely seen as a technological issue, not like housing or education, both of which are commonly thought of as social issues. Thus, energy is thought to transcend social categories in its universal benefits. But what about its harms? Many environmental justice scholars have argued that whenever there are environmental benefits to be enjoyed and pollution burdens to be avoided, these benefits and burdens tend to be stratified unequally by race or class. That is the case with energy.

A good example of how race neutrality is belied by government energy policy and state retrenchment from energy policy and decreasing regulation can be found in Eric Klinenberg's (2002) account of how race and class intersected with natural disaster in Chicago's 1995 heat wave. This heat wave killed 700 Chicagoans, many of them poor and African American (energy intersects with heat waves in multiple and complex ways, in that air conditioners could help reduce deaths, and in energy efficiency policy). He rejects the rhetoric of natural disaster adopted by politicians as a simplified mode of explanation for who, why, and how so many died.[19] Like Klinenberg, environmental justice activists reject race and class neutrality by forcing a closer look at who benefits and who bears the burdens of power plant siting and, by extension, energy policy. They do so by using standard public policy criteria, such as

reports that analyze the racial burdens of energy policy. They also draw attention to the history of harm from corporate entities and exclusion from protection from public agencies, whether at the local, state, or federal level. This combination of standard public policy approaches and attention to histories of racial exploitation and exclusion makes environmental justice energy activism unique within larger environmental and public interest campaigns on energy issues.

The politics of energy regulation and deregulation and distribution generate racialized consequences, especially in the context of the high-energy society and postindustrialism, specifically manifested through rising levels of computerization and other personal electronic, entertainment, and communication devices like cell phones (which require energy to run). Nye (1998) documents what he calls the "high-energy regime" in the United States in the mid-twentieth century that was dependent on a historical anomaly: multiple sources of energy were in oversupply. In particular, the overabundance of oil and petroleum enabled the ascendancy of the automobile and the suburb over the city. He writes, "There was no technological inevitability about the mechanization of agriculture, the exodus from the farm, the preference for motor cars, the decline of central cities, or high unemployment among African Americans. These four American choices were based on energy abundance and they raised new social issues" (209).

The social effects of the rise of the automobile have been well documented. Primary among these is the ascendancy of suburbs, directly relating to the decline of the central cities (Kay 1998). The movement of homes and jobs from the cities to the suburbs has well-known racial and social impacts, concentrating poor and minority populations in the declining inner city. The decline of manufacturing work in the cities, with jobs migrating overseas, has had a particularly destructive impact on African Americans (Wilson 1987). Suburbanization and urban decline were facilitated through racially discriminatory public policies. These ranged from blockbusting and other real estate practices, and redlining by banks, to the subsidization of white flight by the federal government through housing and transportation and highway programs (Jackson 1985, Gregory 1998, Lipsitz 1998).

The growth of the postwar suburb in the United States and the rise of energy consumption through technology led to increasing energy

demands that the United States could no longer meet. In the mid-twentieth century, the United States gradually made the transition from an oil-exporting to an oil-importing nation, vastly altering global geopolitics in the process. Other oil-producing nations, such as Venezuela, Saudi Arabia, and Iran, increased production throughout the latter half of the twentieth century. The Arab oil embargo from October 1973 to May 1974 highlighted the crisis that the lack of national energy policy and development in the United States had created. The 1970s signaled the end in the confidence in the high-energy regime based on electricity, oil, and natural gas, shaken as a result of the oil crisis when price hikes and boycotts by the Organization of Petroleum Exporting Countries (OPEC) stalled the U.S. economy, leading to long lines at gas pumps and a sense of an impending national crisis.[20]

One of the proposed solutions to the energy crisis was nuclear power.[21] Nye (1998) suggests that Ronald Reagan's election as president was related to energy politics because it signified a public declaration of faith in the old order in which high energy consumption went hand-in-hand with the ideology of personal and individual success and the resurgence of the American dream (237). At the same time, a shift in global capitalism resulted in radical shifts in production and consumption. This shift was enabled through changing technologies and communications, documented by David Harvey (1989) among others. Computers were a key component in the electronic energy regime: they put white-collar knowledge workers at the center of the economy, relegating the majority of U.S. workers from blue-collar to service sector employment. Postindustrialism and increasing computerization are also intimately connected. Large-scale adoption of computerization has produced racial impacts through increased production of computers and rising pressure and demands on electricity grids.

Computers, seen in the public eye as a clean technology, are in fact highly toxic to produce (Szasz and Meuser 2000). This distribution of pollution, especially in the production process, is racially stratified. The computer industry is the most chemically intense in the world, using up to 1,000 different chemicals, including arsenic, cadmium, lead, and mercury. The computer production line workers in Silicon Valley, California, who face these occupational health hazards are overwhelmingly nonunionized, low-income Asian and Latina immigrant women workers (Pellow and

Park 2003). The health and environmental effects of computer production line labor are numerous and are particularly destructive to reproductive and nervous systems, triggering miscarriages, for example.[22]

There are also toxic implications for computer disposal, which contributes greatly to toxic dumping and toxic leachate in landfills, in the United States and globally. Finally, steadily increasing electricity demand as a direct result of increased computer use is a primary factor driving the flurry of electric power plant siting proposals. Thus, a complex set of technological innovations and demands for energy and global economic restructuring in the manufacturing sector intersects with existing racial, gender, and economic inequalities.

Energy Deregulation: Heartbreak Hotel

> The original idea of energy deregulation in New York sounds like something that Austin Powers might have thought up. Consumers . . . would be divorced from their old ball-and-chain utility companies, and the electricity marketplace would become a kind of giant dating game, full of come-ons and casual liasons: no long-term commitments, no guilt. (Johnson 2003)

The increase in the numbers of proposed power plants (and thus campaigns over power plant siting in California and New York State) is linked at least in part to energy deregulation. For that reason, it is important to understand its ideological and legislative roots. Deregulation is a retrenchment from older forms of state regulation, but its proponents use the language of liberation to advance their ideological agenda. The actual record of deregulation is much more ambivalent and complex, signifying broken dreams alongside opportunity. Hirsh (1999) identifies three stresses on the old system of regulation and the utility consensus, which had ensured stability in the system: technological stasis, the energy crisis, and ecological critiques. Technological stasis meant that limits of efficiency had been met, the 1970s energy crisis disrupted old systems, and the environmental movement grew hostile to nuclear power as popular social movements increasingly challenged utility companies. These three stresses diminished the authority of utility executives and the power of utility companies in two important ways: by questioning the ideology of growth and through growing environmental legislation that decreased utility companies' unilateral decision-making power.

The largest threats to the utility consensus emerged in the post-1970s energy crisis period. Chief among these was new federal legislation, specifically the Public Utility Regulatory Policies Act of 1978 (PURPA). In 1977, President Jimmy Carter had urged the nation to respond to the energy crisis with the "moral equivalent of war" and sought to advance federal policies that addressed the weaknesses in the energy system laid bare by the oil crisis. PURPA opened the door to elements of deregulation in the system. It sought to increase energy efficiency by reforming the way customers paid for electricity and to remove barriers to entry in the generation sector. The law allowed unregulated electricity producers to contest the monopolistic position of power companies.[23] PURPA created new classes of participants in the electric utility community.[24] It also spurred innovation and small-scale technologies outside the realm of the traditional utility system and large-scale utility production facilities.[25]

In short, PURPA invalidated the philosophical and practical justification for the natural monopoly system by introducing free market principles such as the creation of a competitive market and pay-for-performance. It altered the demographics of power within the utility system by decreasing power held by the utilities and increasing that of regulators and other stakeholders.[26] The Federal Energy Policy Act of 1992 further encouraged competition among wholesale power producers and gave states the prerogative to introduce retail competition. The act allowed regulated utilities to spin off their generation facilities to become exempt wholesale generators. Deregulation depended on open access to transmission networks and tended to fracture the modified consensus based on demand-side management and integrated resource planning.[27] The overall impact was that power companies lost control over the system as the utility consensus vanished.

In 1996 the Federal Energy Regulatory Commission (FERC) issued Order 888, which forced utilities to open their transmission lines to other utilities and electricity wholesalers. It also forced the functions of generation, transmission, and distribution to be separated from one another and to be priced separately. This background is the legislative and historical context for large-scale state-level deregulation, most disastrously enacted in California when rolling blackouts swept the state (McNamara 2002, Sweeney 2002). In 1996, California proposed the most sweeping statewide electricity industry restructuring in the nation. Environmental

and low-income advocates in California vigorously fought the dissolution of environmental and public interest requirements in the face of deregulation. The story of California's disastrous experiment has been well documented, but the impact of California's experience on other states, such as New York, is less well understood. In fact, California's energy crisis shaped the political discourse of power plant siting and environmental justice activism against power plants in New York City in 2001 and 2002.

Race and Air Pollution: Environmental Justice Power Plant Activism

The rush of power plant proposals in the wake of industrywide deregulation brought to the forefront the relationship among race, pollution, and power plant siting. That is because, in general, proposed power plants were to be sited in communities of color.[28] Power plant pollution is a major contributor to global warming and air pollution, the impacts of which are racially disparate. According to a national report published in 2002 by a broad coalition of civil rights, public health, environmental advocacy, and environmental justice organizations, *Air of Injustice: African Americans and Power Plant Pollution*, 78 percent of African Americans live within thirty miles of a power plant, as opposed to 56 percent of the white population (Black Leadership Forum et al. 2002). In addition, African Americans account for 17 percent of people living within five miles of a power plant site, statistically higher than the percentage of the population that they make up nationally.[29]

New power plant siting in California and New York, largely a result of deregulation, also has racially concentrated effects. A Latino Issues Forum report, *Power Against the People* (2001), analyzed eighteen proposed power plants in California in the wake of the California energy crisis and showed that for 80 percent of the plants, the proportion of Latinos in the surrounding population exceeded state averages. In terms of income, for 83 percent of the plants, the family income for nearby residents was less than $25,000 per year, far below the state mean household income. The report also criticized the expedited review process for the siting of power plants, instituted by Governor Gray Davis. This fast-track legislation for siting and approval was extremely controversial because it essentially skirted environmental review, specifically the

California Environmental Quality Act. The legislation, supported largely by power companies eager to build, was passed despite rising political controversy from consumer advocates and environmental and environmental justice organizations.

Power plant siting is a major community organizing issue in California. In South Gate, a largely Latino and immigrant neighborhood in Los Angeles, a community coalition organized by Communities for a Better Environment (CBE) won an informal neighborhood vote against a proposed power plant, which the builder respected (Soller 2001). In the Bay Area, community-based organizations such as CBE and Bayview Hunters Point have been involved in multiyear campaigns to shut the Hunters Point Power Plant and stop the expansion of Potrero Plant in African American communities in San Francisco. According to the California Air Resources Board, the Potrero and Hunters Point plants are the biggest and second-biggest industrial air polluters in San Francisco. Community anger at the expansion of these power plants forced agencies to reject the operations and plans for expansion.[30]

In the political controversies over the concentration of power plants and their impact on the health of people of color, the social construction of the issue links these diverse campaigns. That is, the generalized dissatisfaction with living near an existing or proposed power plant is made racially specific. Rather than being a general environmental, public health, or community issue, the power plant issue becomes a racially charged example of a larger problem as crystallized under the rubric and umbrella of environmental racism. Energy and power plants become yet another example of how people of color are harmed by a large-scale technological system and a political process unresponsive to their communities and needs. This system is increasingly guided by free market principles and the profit margin in an era of deregulation. For communities of color living near power plants, deregulation is a concrete policy that hits their neighborhoods hard, with little protection or regard for their health or environment.

New York State Power Politics

What were the statewide politics that provided the context for the siting of power plants in low-income neighborhoods and communities of color

in New York City? In 1997, in response to Order 888, power providers in New York State filed a proposal with FERC to create a competitive wholesale market through the formation of the New York Independent System Operation, known as the NYISO (Lentz 1999b). The ISO is a nonprofit Albany company that regulates energy supply for New York State.[31]

In the early 1990s, electricity demand in the state had increased approximately 10 percent at the same time that state spending on energy efficiency and conservation dropped dramatically.[32] The state's increased demand was driven by population growth and increased use of computers and was exacerbated by Governor George Pataki's 1995 targeted, controversial, and roundly criticized cutbacks in energy efficiency and energy policy planning in anticipation of deregulation.[33]

In 1997, New York State's peak demand for energy was 28,700 megawatts. Governor Pataki sought to avoid passing state legislation on the issue (as in California), going instead through the Public Service Commission (PSC), the state body that regulates utilities (including electricity, gas, telecommunications, steam, water, and cable) and whose members he appoints. In 1996, the PSC ordered competition in the wholesale market to start the next year and mandated the introduction of retail access in 1998. The PSC's ideology is clearly stated in its mission statement. According to the PSC's Web site, one of its central goals is to "*promote competitive markets and streamline regulation. . . .* We believe customers are best served by competitive markets. Therefore, we will promote their development and will increasingly use output oriented, performance based approaches to regulated areas that are not competitive. *Once markets become sufficiently competitive, we will eliminate regulatory involvement to the extent permitted by law*" (emphasis added). As Gerald Norlander of the Public Utility Law Project (PULP), which advocates for low-income and rural utility consumers, noted, the PSC left issues of affordability off the table. The PSC implied that broadened taxpayer-funded programs or "energy stamps," be implemented to address the needs of low-income consumers, although it did not address the political viability of such a solution. The PSC's view that competition would bring greater efficiency and lower prices dominated the public discourse, despite critiques from consumer advocates.

Deregulation proponents argued, both practically and philosophically, that the market would be a perfect self-regulating system that would

ultimately require that the PSC phase itself out its own existence. The political and ideological belief that deregulation would "magically" lead to lower prices was not unique to New York. It was also the driving force behind California's experience. The rhetoric of inevitable price reduction saturates the language of deregulation advocates, who believe that freedom from regulation necessarily cuts costs. At the beginning of his deregulation experiment, Pataki promised "more competition and lower prices." Despite this promise based on the "let-the-markets-rule" ideology, New York State's energy costs were 70 percent higher than the national average in 2002—higher than when Governor Pataki took office in 1994 and before deregulation, when the costs averaged 50 percent higher than the national average (Barrett 2002).

The PSC forced the state's utilities to sell their generating plants and instead buy electricity from independent generators in new wholesale markets, a provision lauded by deregulation advocates. "Selling the plants is enormously important. . . . This was the true "success story coming out of New York," according to Howard Fromer, director of government affairs in New York State for soon-to-be-disgraced but at the time still-high-flying Enron (Lentz 1999c). At the same time, the PSC plan was criticized as not going far enough. The *Daily News* bemoaned the retail plan as its implementation began, its editorial page declaring (preenergy crisis in California) that "energy deregulation in New York is a bust." New Yorkers, who wanted "real electric competition and real savings won't find it here. They'll have to move to California." The editorial page quoted Fromer's criticism that New York had only an "illusion of competition" because the New York plan was to deregulate the generation of electricity only, which constitutes just 25 percent of the total bill, since the other parts of the bill are in distribution, transmission, and delivery costs (Rate Reform lacks energy, 1998).

The media spectacle of the California energy crisis intervened as different actors used the blackouts to promote their respective agendas. The public relations battle over energy deregulation in New York State and the battle over power plants in 2001 in New York City were clearly shaped by the California energy crisis. Community advocates charged that New York State was "using a climate of fear" (of the California crisis) to speed through the political and regulatory processes. Proponents of deregulation and new power plant construction in New York

City warned ominously, "Every day's delay will push New York City one day closer to California" (Johnson 2001). New York State's deregulation proponents (agencies and companies) fear-mongered that communities unhappy with an expedited environmental and siting review process were selfishly and dangerously placing New York City in harm's way, closer to blackouts. In New York City, the charge of NIMBY politics was marshaled by power companies that claimed a larger public good in their actions, separate from their own economic profits and interests. CURE addressed this claim of NIMBYism in its literature: "While both the press and NYPA would like to paint the opposition as a 'not in my backyard' situation, it is important to note that the areas where the plants have been proposed all have at least one thing in common: all the neighborhoods are low-income communities of color! All these neighborhoods are already disparately impacted by poor air-quality and an overabundance of pollution sources," and NYPA did not show that the need was real in the time frame laid out.

As California had found, so did New York State discover that deregulation did not guarantee or magically lead to lower prices.[34] For example, Con Edison was at the mercy of the deregulated wholesale market as it was forced to buy electricity from plants it had been mandated to sell. That, combined with the scarcity of supply and the rising costs of natural gas and oil, led to increasing prices. Electricity bills jumped 43 percent in the first summer after deregulation, while delivery costs, which were still regulated, remained stable (Lentz 2000c). Deregulation also led to cutbacks on other noneconomic criteria. Under deregulation, utilities such as Con Edison had a major incentive to increase sales rather than promote energy efficiency or clean generation. For example, Con Edison's energy efficiency investments declined greatly, from $124.7 million in 1993 to $37 million in 1997. Postmortem analyses of the energy crisis found that it was the flawed structure of deregulation and the machinations of power companies that led to blackouts, not lack of supply.

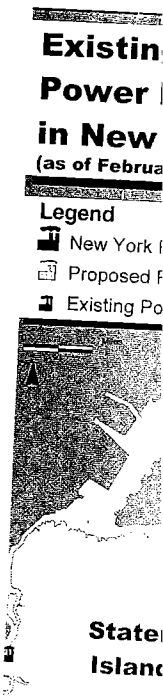
New York City: Race and Power Politics

The New York City energy market, one of the nation's largest, is worth about $7 billion. The city produces 7,700 megawatts of electricity and

imports 5,000 megawatts, for a total of 12,700 megawatts. Demand surges in summer, largely due to air-conditioning (New York Power Trip Up Threatens Growth, 1999). The city's energy market is severely constrained by geography because there are only three transmission hubs through which power can flow into the city. Thus, there is a limit to how much power can flow through the system, much like a traffic bottleneck. New transmission lines are difficult to site because of the population density surrounding the city, high property values, and the extended time to receive permit approval. For those reasons, the independent system operator has a rule that requires that 80 percent of New York City's peak load be located in New York City.

In 2002, there were eight private power plants proposed for New York City, in addition to ten quasi–public power plants proposed by the New York Power Authority (NYPA), one of the largest state-owned public power enterprises, with a significant impact on state and city energy politics.[35] In 2000, it announced a plan to install ten 44 megawatt natural gas power turbines throughout New York City, at a cost of approximately $510 million.[36] These sites—four in the South Bronx (on two sites), two in Astoria (on one site), one in Williamburg, two in Sunset Park (on one site), and one on Staten Island—are in industrial waterfront communities (see figure 5.1). These plants were supposed to be temporary, although residents of these communities were innately suspicious of this temporary status, on the logic that it is harder to get rid of a facility that has already been built. Their suspicion was justified when NYPA announced that the turbines were not temporary (as promised) and that they would possibly be sold to private companies (Pérez-Peña 2001a).

The shape that deregulation took in New York City was racialized by activists who focused on the siting of power plants, which was concentrated in low-income areas and communities of color. The NYPA plants were sited in communities with a strong history of environmental justice activism and where residents shared a political and historical framework that interpreted city, state, and corporate initiatives to site noxious facilities as examples of environmental racism. Opposition to the NYPA plan was strong and immediate, mainly based on the impact of air pollution and exacerbation of asthma rates from these facilities on local communities of color. As in the garbage case study, there are many community



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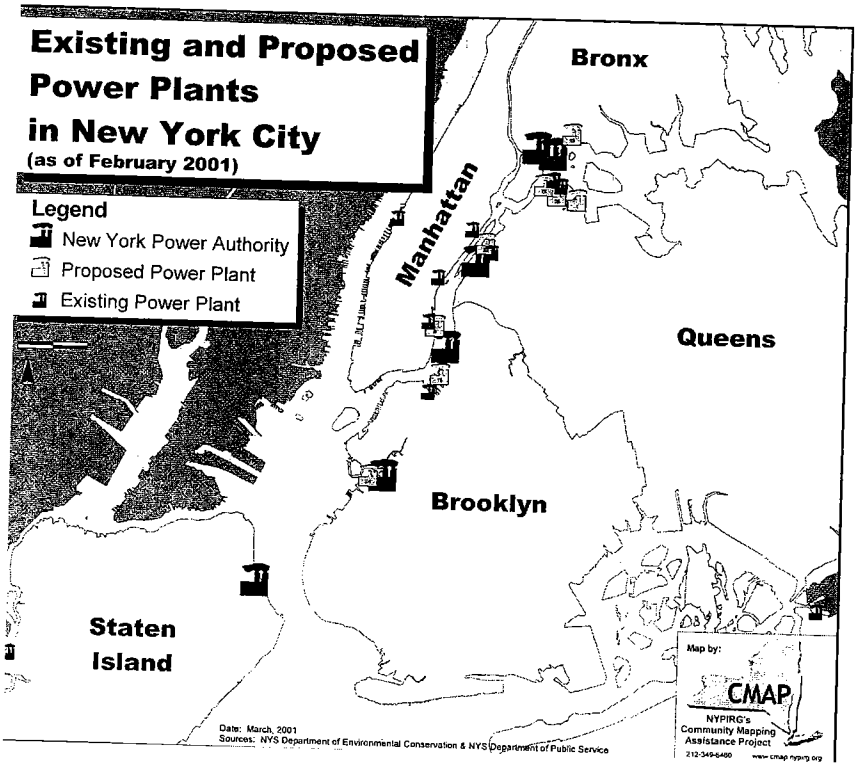

Figure 5.1
Existing and proposed power plants in New York City (as of February 2001) (Credit: NYPIRG)

and environmental groups with different agendas working on the power plant issue.[37]

Communities United for Responsible Energy (CURE) was the citywide environmental justice and energy coalition that emerged with member organizations from throughout the city.[38] Its platform was comparable to that of other clean air and energy advocates, but it differed in that it emphasized a racial discourse and foregrounded the language of environmental justice.

There were also important structural and ideological connections between CURE and the Organization of Waterfront Neighborhoods (OWN) coalition. This overlap was evident in terms of organization, membership, and structure. For example, Eddie Bautista was the primary community organizer for both OWN and CURE. There was also a

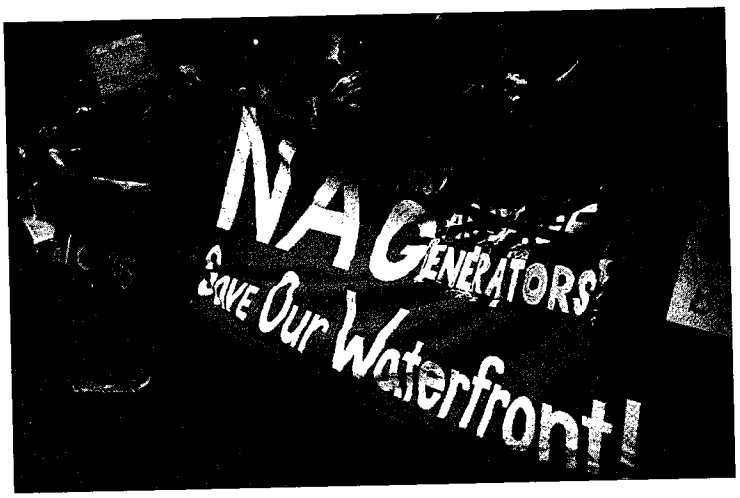

Figure 5.2
Garbage or generators? A long-time garbage group (Neighbors Against Garbage) changed its name to reflect its new battle: Generators
(Credit: Photo by author)

natural link between the garbage and the energy issues, because these facilities were targeted for the same geographic areas, particularly the South Bronx, Williamsburg, and Sunset Park (see figure 5.2). According to Bautista, "We [the OWN coalition] were blindsided by the NYPA plan and the power plant issue, which seemed to come out of nowhere" (personal communication, May 16, 2002). There were also some important differences, particular to the energy case study. For example, although the CURE coalition worked, like OWN, primarily within the discourse of environmental racism and environmental justice generally, CURE worked primarily in Latino communities. There were no power plants proposed for West Harlem, a historic stronghold for environmental justice activism. Also, the Chinese community in Sunset Park was not involved in the power plant activism, which they saw as being more physically distant from their neighborhood stronghold away from the waterfront.

Many of the ideas being promoted by CURE and its allies are basic to energy reform and environmental perspectives, and not necessarily unique to communities of color: increasing conservation and efficiency programs and completing an overall energy needs assessment and

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comprehensive planning process. Some of CURE's platform was standard in terms of representing the consumer, public interest, and environmental perspectives: calls for rate regulation protections (which is the actual cost of producing the power with a certain prescribed profit factor to set the rate for each generator), energy demand reduction, transition to clean alternatives (renewables such as solar, wind, and fuel cell technologies), and the demand that no new plants be built until older plants were fully repowered (CURE platform). Repowering refers to an upgrade of an existing power plant's infrastructure, where turbines, boilers, and other plant components are replaced with more efficient and less polluting technology, allowing some portion of an existing facility to continue operation as part of a new or reconfigured system. Repowering usually involves gas, oil, and coal-fired boilers.

Some of CURE's demands were more radical in terms of their environmental, health, and democratic implications. These proposals included imposing a temporary moratorium on permits for new power plants. CURE also called for a community-based planning process that included access for underrepresented constituencies, the protection of the waterfront, and the need to promote open space for recreation (this issue is a key one for waterfront communities, which have fewer areas of recreation and open space than other neighborhoods). Finally, CURE called for "cumulative review," which would look at the total number of environmental facilities in a particular area, rather than at single sites, as a way of measuring total, cumulative environmental and health impacts on local communities.

CURE members were incensed by the siting proposal itself, as well as NYPA's top-down approach and arrogance toward local neighborhoods. According to NYPA's fact sheet, "Power NOW!" the schedule for implementation was set and predetermined, impervious to community demands: "To be prepared for the summer demand season, these new plants *must be ready* to begin operation June 1 2001" (italics added). NYPA's self-imposed deadline of June 1, ignored any time or process for state-mandated review, normally through an environmental impact statement (EIS) under the State Environmental Quality Review Act (SEQRA). Also, in three sites there were two proposed turbines at 44 megawatts each (for a total of 88 megawatts). NYPA promised to produce only 79.9 megawatts for minimal environmental review in order to go under the

80 megawatt threshold detailed under Article X. Article X of the New York State Public Service Law is the unified and expedited review process for applications to construct and operate electric generating facilities with capacities of 80 megawatts or more.[39]

NYPA requested that the siting board shorten the public comment period from twenty-one to ten days, a request that incensed communities who felt shortchanged by the process.[40] The board approved both the exemption from Article X and the shortened public comment period. On November 20, 2000, a mere four days after the siting board's Article X waiver, NYPA issued a negative declaration, which means a project has been deemed to have no significant environmental impact. Two days later, the day before Thanksgiving—another move that outraged communities who saw the scheduling as an obvious and cynical attempt to reduce public participation—the New York Department of Environmental Conservation (DEC) issued draft air permits. The DEC scheduled public hearings for December 13, 2000, with a notice for public comments by December 22, 2000, three days before Christmas. The three public hearings in Bronx, Brooklyn, and Queens were all scheduled for the same time, making it impossible for activists to attend multiple meetings and support their allies, in what CURE saw as a divide-and-conquer strategy. All in all, within a two-week span the DEC and the siting board waived Article X and EIS requirements and issued the required regulatory permits. This expedited review ensured that NYPA was not forced to examine alternative processes or sites or to mitigate the impacts of its operations (Bautista 2001).

Not surprisingly, community groups in the affected neighborhoods were outraged by the fast-track process and lack of public participation at every stage of the process. Community organizations and especially CURE members attempted to mobilize speakers and a large turnout for these public hearings. But because they had little time to organize, the groups met with limited success. Given the failure of the regulatory process, community groups then sought legal redress. In 2001, a coalition of community groups, represented by New York Lawyers for the Public Interest, sued NYPA over its ten turbines and the expedited review process. The groups included organizations in neighborhoods long associated with environmental justice activism in New York City like UPROSE (Sunset Park), El Puente, and We Stay/Nos Quedamos in the

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South Bronx. In the NYLPI case, Judge Lawrence Knipel ruled in favor of NYPA that there had been no violation of the law (Riccardi 2001). The community groups, through their lead counsel, responded to this decision that it sent "the message that the process can be manipulated and maneuvered to ram projects through, particularly in low-income and communities of color."[41]

The power politics of electricity was also a major political issue at the city and the state levels during crucial elections that were shaped to a certain degree by race and class considerations. Energy deregulation was most closely associated with Governor Pataki, who pushed NYPA to install the turbines and expedite the building of new power plants throughout the state. His 2002 gubernatorial opponent was New York State comptroller Carl McCall, who was attempting to become the first African American governor in New York. It was not altogether surprising that McCall released a critical report attacking the state's deregulation plans. In it, he raised concerns about NYPA's management and spending and criticized it for not providing information in a timely manner for the audit. He also questioned the need for so many generators, although he did not focus on the racial dimensions of the siting (Barrett 2003).

Mayor Giuliani joined the fray and declared his enthusiastic support for the NYPA facilities: "This has ramifications beyond just the economy. It goes to whether people are going to live or die. Whether people are going to be safe." In response to community skepticism at this claim, Giuliani sneered back, "I am good at teaching people reality" (Lipton 2001b). In sharp opposition, Bronx Borough president Fernando Ferrer cited the asthma epidemic and air pollution concerns in the South Bronx as a reason to reject the South Bronx facilities (Lentz 2000b). Ferrer, a long-time Giuliani foe, was locked in a battle with Mark Green in the Democratic mayoral primary. He objected to Judge Knipel's decision, saying that "when it comes to building a multi-screen cineplex or Disney, they roll out the red carpet. . . . but when the Power Authority need to construct new generators that could foul the air with dangerous toxins, the state immediately looks to Black and Hispanic neighborhoods in the outer boroughs" (McKinley and Cardwell 2001). This theme fit well with Ferrer's campaign theme, "The Other New York," in his bid to become the first Latino mayor of the New York (he lost the primary). This slogan

captured the idea that working-class New Yorkers and communities of color were being shut out of the city's economic boom. It addressed a host of issues where people of color and low-income communities felt marginalized by police brutality and criminal justice policy, education, economic development, and environmental concerns.

Ferrer also spoke at a rally held in front of one of the NYPA sites in Sunset Park on Mother's Day in 2001, which attracted about seventy participants, including representatives from CURE groups from other neighborhoods who came to give their support, as well as local and city-wide politicians who came to show solidarity with the neighborhood on the power plant issue. Ferrer blasted Governor Pataki for what he called hypocrisy on race and the environment, evident, said Ferrer, in Pataki's support for ending the navy's occupation of Vieques, a major environmental and civil rights issue for Puerto Ricans (in both New York and Puerto Rico), seen as an attempt to win Latino votes, at the same time as he was forcing Latino communities in New York City to live with more power plants and air pollution. The rally attendees marched in a circle, chanting and holding signs that accused the Department of Environmental Conservation (DEC) of neglect. "DEC = Department of Environmental Crime," one sign read. Others called for "Power Planning, Not Profit." Still others focused squarely on the asthma and air pollution problem, calling for "Less Wheezing, More Breathing" and "Less Asthma and More Justice."

Less than a month later, on June 1, 2001, the day the NYPA turbines were being turned on, CURE organized a protest of about 250 people in front of Governor Pataki's office in midtown Manhattan. The outreach flier for this rally read: "While Manhattan gets one skyline, the rest of NYC gets another. Are Power Plants Pataki's idea of how to fight asthma?" The visuals are of the World Trade Center (this event took place three months before the World Trade Center was destroyed by terrorists), contrasted with two power plant stacks spewing smoke. The two faces are a smiling Pataki and a black youth with an asthma pump in his mouth gasping for air during an asthma attack. This visual contrast of the state's most powerful politician with a child of color with asthma is a literal representation of CURE's essential politics and belief systems, which seek to place the lives and health of children of color at the center, not the periphery, of public view (see figure 5.3).

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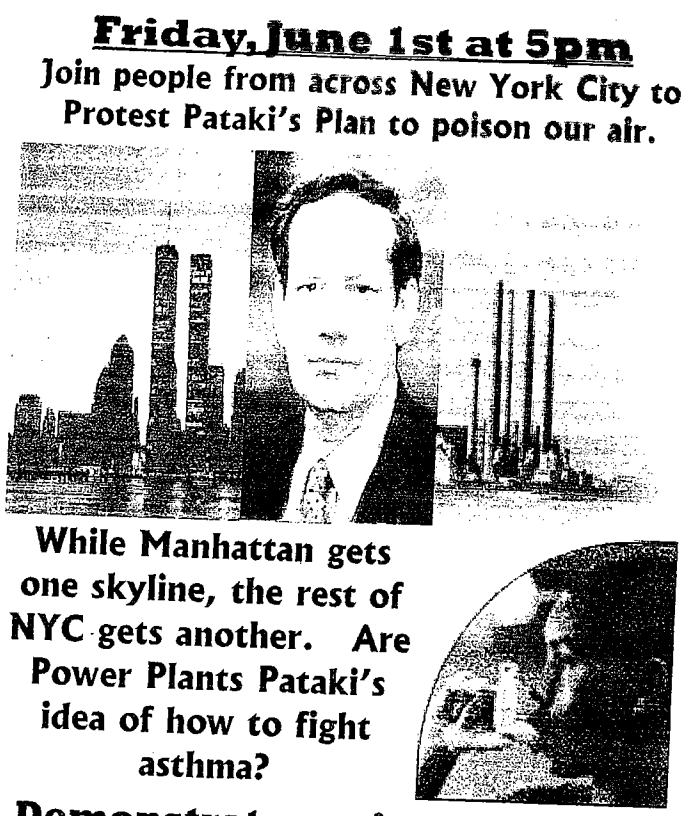

Figure 5.3
CURE flier

At that rally, a racially diverse mix of community residents from a number of affected communities, accompanied by politicians, marched and spoke out against the governor's energy policies. CURE drove a car to the rally with three artistically rendered power plant stacks on the roof of the vehicle. People wore gas masks and carried signs that read: "South Bronx Is Choking." These signs reminded viewers and passing pedestrians that air pollution may kill, even if does so "Slower Than Guns." The rally forced the midtown business crowd, mostly white-collar workers and executives, to see the community anger over an issue that is literally, politically, and figuratively rendered invisible and marginalized to the periphery of the city's poorest and most vulnerable neighborhoods of working class and people of color. The rally made the noonday crowd stop and look at poor people, sick people, and children and think about where the city's energy comes from and who is possibly harmed in the process of its creation and usage (see figure 5.4).

It is impossible to gauge the direct impact of these demonstrations on politicians and the regulatory process. Environmental justice energy

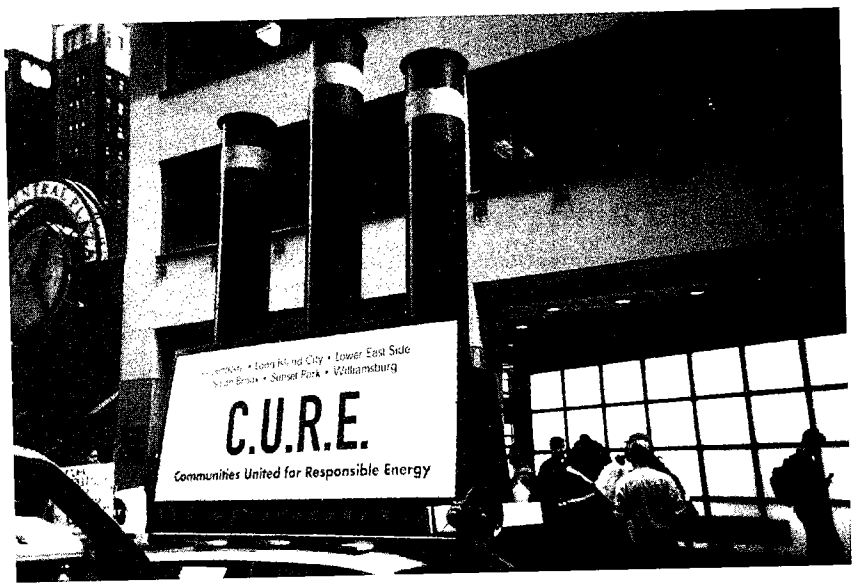

Figure 5.4
CURE Protest, June 1, 2002
(Credit: Photo by author)

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activism has made its clearest impact in the legal arena, which is paradoxically insulated from this type of community pressure. The legal history of this campaign exemplifies the limits and successes of using the courts as a means to achieve environmental justice, since lawsuits can be dragged out and appeals can overturn both good and bad decisions.[42] What is significant about the public displays of community anger is that they are crucial parts of a multipronged organizing strategy on the energy issue that mobilized local residents to participate in what is traditionally a closed process and made political a normally technocratic issue left in the hands of experts. At the same time that there were public demonstrations, CURE also wrote an extensive and detailed letter to the state energy planning board outlining its objections on three issues: cumulative impacts, PM 2.5 (small particle pollution), and Article X reform (on the siting of power plants), and the need for energy efficiency and clean, renewable energy. Activists thus transformed what is normally treated as a complex technological and scientific issue into a legitimate political subject open to vigorous public protest and debate.

Race and Siting: Contrasting Causality

So why exactly were the NYPA facilities sited where they were? The answer to this question is crucial, and thus the source of much political controversy. NYPA claimed that the sites were chosen by nonracial and noneconomic criteria: these areas had the right zoning and electricity and gas hook-ups, and could be in use by the summer of 2001. At the same time, NYPA conducted its own internal environmental justice assessment, which looked at poverty and race demographics around its ten sites. But it refused to release this assessment publicly, despite several Freedom of Information Act requests. It thus was hidden from public view until the NYLPI lawsuit uncovered it through the discovery process.

NYPA's own 2001 In-City Project Environmental Justice Assessment showed that areas around NYPA sites had higher poverty rates and higher proportions of minorities within a half-mile radius than the citywide average. The citywide averages are 19 percent below poverty, 29 percent black, and 24 percent Hispanic. (These numbers are based on the 1990 census data. Racial populations do not total 100 percent because "Hispanic" can include members of all different racial categories.)

At five of the seven sites, the poverty level exceeded the city average. The most extreme cases were in the South Bronx: at the Harlem River Rail Yard site, the rates were 51 percent in poverty, and at Point Morris, 44.1 percent poverty. The racial overrepresentation was most dramatic at Harlem River, where the population was 36.9 percent black and 64.7 percent Hispanic, and at Point Morris, where the percentages were 48.5 percent black and 52.3 percent Hispanic. In Williamsburg, the poverty rate was 28.7 percent, and the population was 7.5 percent black and 57.9 percent Hispanic. In Sunset Park, the poverty rate was 27 percent, and the population was 8.5 percent black and 52.3 percent Hispanic.

Local communities and their allies looked at these numbers and drew their own conclusions that social, racial, economic, and political factors, not race-neutral ones, were the primary reason that these sites were chosen.[43] Local communities interpreted these data to mean that their neighborhoods had been deliberately targeted for their racial and social demographics. Community groups determined that their neighborhoods were seen as easier targets than wealthier and whiter neighborhoods, and had less political and social capital. Communities of color drew this conclusion in part because of NYPA's secretive and top-down approach, an attitude the agency would not use in more affluent neighborhoods. In its talking points for a NYPA hearing in December 2001, a CURE flier critiqued the lack of community participation, the lack of health assessment of the affected neighborhoods, and the harm to air quality, which NYPA ignored in its draft EIS. CURE outlined these objections in more detail in a December 27 letter to NYPA, again moving between public and bureaucratic critiques for different audiences.

Even the *New York Times*, which historically supported controversial environmental projects despised by local communities (such as the Brooklyn Navy Yard incinerator), blasted NYPA in an editorial (The Turbine Mess, 2001). The *Times* charged that New York State "ignored governmental processes, cut regulatory corners and exploited a loophole in state laws to dodge full environmental review." The environmental review did not study the effects on noise, air quality, water quality, land use, or community character even though the proposed sites were within 400 feet of houses, schools, and parks. The editorial cited numbers generated by the Natural Resources Defense Council that New York City

had access to greater megawatts than its anticipated generated load and that NYPA was depending on "secrecy, speed and dubious tactics."

With NYLPI's assistance, community and environmental justice groups appealed Judge Knipel's ruling even as the turbines were turned on in June 2001 as originally planned by NYPA (see figure 5.5). In July 2001, the Brooklyn appellate court overturned the decision, ruling that New York State had violated the State Environmental Quality Review Act. The ruling did not block operation of the turbines, but the appellate division did order an environmental impact study and directed NYPA to study the plant's output of soot particles as small as 2.5 microns

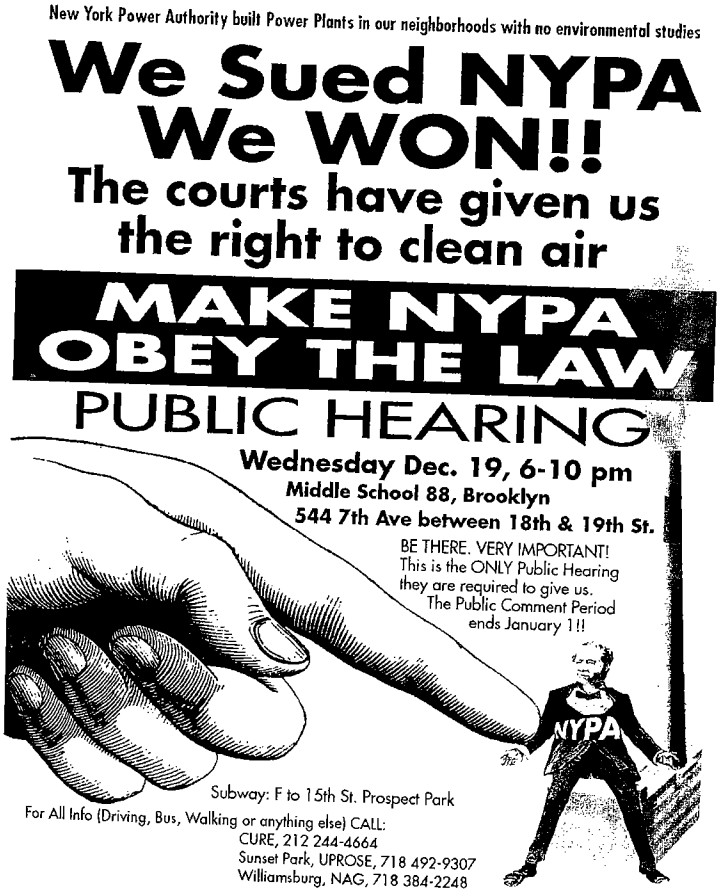

Figure 5.5
CURE-NYPA flier