



## Overcoming Regulatory Hurdles

### *NEW YORK POWER AUTHORITY SECURES NEW 50-YEAR LICENSE FOR THE NIAGARA POWER PROJECT*

*New York Power Authority*

When the 2,755 MW Niagara Power Project—the nation’s largest hydroelectric project regulated by the Federal Energy Regulatory Commission (FERC)—began preparing for relicensing, the New York Power Authority (NYPA) engaged Van Ness Feldman, P.C. for strategic guidance and legal counsel regarding the labyrinth of complex and overlapping federal, state and international regulations required to obtain a new license for the Niagara Project.

In the seven-year effort that followed, Van Ness Feldman counseled NYPA in every facet of relicensing—from early strategy development, through resolution of study disputes and scoping of environmental issues under the National Environmental Policy Act (NEPA), to settlement negotiation and drafting and preparation of the relicensing application.

With Van Ness Feldman’s assistance, NYPA completed all necessary reviews and obtained a host of state and federal approvals required for the relicensing. This effort included preparation of an environmental impact statement under NEPA, consultation with Indian Nations and the State Historic Preservation Officer under Section 106 of the National Historic Preservation Act, acquisition of a water quality certification under Section 401 of the Clean Water Act and a consistency determination pursuant to the Coastal Zone Management Act, and completion of informal consultation under Section 7 of the Endangered Species Act.

As a result of this undertaking, NYPA—early in the process—reached a comprehensive settlement agreement with federal and state resource agencies, non-governmental organizations, municipalities, and Indian Nations to address the full spectrum of environmental, recreational, cultural, and socioeconomic issues raised during the relicensing process.

On March 15, 2007—over five months *before* expiration of the current license—the relicensing process culminated with FERC’s approval of the settlement agreement and issuance of a new 50-year license for the Project. FERC’s order did not impose any operational changes to the Project and adopted the following measures as proposed in the comprehensive settlement:

- Habitat improvement projects;
- Recreational improvements;
- Funding for future environmental enhancement projects;
- Land management and recreation plans;

- Management and protection of historic properties;
- Funding for land conservation; and
- Funding for capital improvements.

While a few stakeholders protested the comprehensive settlement and the issuance of a new license for the Project, Van Ness Feldman effectively advocated on behalf of NYPA before FERC and FERC rejected these stakeholders' views and approved the settlement without modification. Van Ness Feldman is currently assisting NYPA with the issues associated with compliance and implementation of the new license terms and conditions.