§ 292.208 Special requirements for hydroelectric small power production facilities located at a new dam or diversion.

(a) A hydroelectric small power production facility that impounds or diverts the water of a natural watercourse by means of a new dam or diversion (as that term is defined in § 292.202(p)) is a qualifying facility only if it meets the requirements of:

(1) Paragraph (b) of this section;
(2) Section 292.203(c); and
(3) Part 4 of this chapter.

(b) A hydroelectric small power production described in paragraph (a) is a qualifying facility only if:

(1) The Commission finds, at the time it issues the license or exemption, that the project will not have a substantial adverse effect on the environment (as that term is defined in § 292.202(q)), including recreation and water quality;
(2) The Commission finds, at the time the application for the license or exemption is accepted for filing under § 4.32 of this chapter, that the project is not located on any segment of a natural watercourse which:

(i) Is included, or designated for potential inclusion in:
(B) A State wild and scenic river system;

(ii) Crosses an area designated or recommended for designation under the Wilderness Act (16 U.S.C. 1132) as:
(A) A wilderness area; or
(B) Wilderness study area; or
(iii) The State, either by or pursuant to an act of the State legislature, has determined to possess unique, natural, recreational, cultural, or scenic attributes that would be adversely affected by hydroelectric development.

(d) If the project is located on any segment of a natural watercourse that meets any of the conditions in paragraph (c)(2) of this section, the applicant must provide the following information in its application:
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(1) The date on which the natural wa-
tercourse was protected;
(2) The statutory authority under
which the natural watercourse was pro-
tected; and
(3) The Federal or state agency, or
political subdivision of the state, that
is in charge of administering the nat-
ural watercourse.

[Order 499, 53 FR 27003, July 18, 1988]

§ 292.209 Exceptions from require-
ments for hydroelectric small
power production facilities located
at a new dam or diversion.

(a) The requirements in §§ 292.208(b)(1)
through (3) do not apply if:
(1) An application for license or ex-
emption is filed for a project located at
a Government dam, as defined in sec-
tion 3(10) of the Federal Power Act, at
which non-Federal hydroelectric devel-
opment is permissible; or
(2) An application for license or ex-
emption was filed and accepted before
October 16, 1986.

(b) The requirements in §§ 292.208(b)
(1) and (3) do not apply if an applica-
tion for license or exemption was filed
before October 16, 1986, and is accepted
for filing by the Commission before Oc-

(c) The requirements in § 292.208(b)(3)
do not apply to an applicant for license
or exemption if:
(1) The applicant files a petition pur-
suant to § 292.210; and
(2) The Commission grants the peti-
tion.

(d) Any application covered by para-
graph (a), (b), or (c) of this section is
excepted from the moratorium imposed
by section 8(e) of the Electric Con-
sumers Protection Act of 1986, Pub. L.
No. 99–495.

[Order 499, 53 FR 27003, July 18, 1988]

§ 292.210 Petition alleging commitment
of substantial monetary resources
before October 16, 1986.

(a) An applicant covered by
§ 292.203(c) whose application for license
or exemption was filed on or after Oc-
tober 16, 1986, but before April 16, 1988,
may file a petition for exception from
the requirement in § 292.208(b)(3) and
the moratorium described in
§ 292.203(c)(2). The petition must show
that prior to October 16, 1986, the appli-
cant committed substantial monetary
resources (as that term is defined in
§ 292.202(r)) to the development of the
project.

(b) Subject to rebuttal under para-
graph (d)(7)(ii) of this section, a show-
ing of the commitment of substantial
monetary resources will be presumed if
the applicant held a preliminary per-
mit for the project and had completed
environmental consultations pursuant
to § 4.38 of this chapter before October
16, 1986.

(c) Time of filing petition—(1) General
rule. Except as provided in paragraph
(c)(2) of this section, the applicant
must:
(i) File the petition with the applica-
tion for license or exemption; or
(ii) Submit with the application for
license or exemption a request for an
extension of time, not to exceed 90 days
or April 16, 1988, whichever occurs first,
in which to file the petition.

(2) Exception. If the application for li-
ence or exemption was filed on or
after October 16, 1986, but before March
23, 1987, the petition must have been

(d) Filing requirements. A petition
filed under this section must include
the following information or refer to
the pages in the application for license
or exemption where it can be found:
(1) A certificate of service, con-
forming to the requirements set out in
§ 385.2010(h) of this chapter, certifying
that the applicant has served the peti-
tion on the Federal and State agencies
required to be consulted by the appli-
cant pursuant to § 4.38 of this chapter;
(2) Documentation of any issued pre-
liminary permits for the project;
(3) An itemized statement of the
total costs expended on the applica-
tion;
(4) An itemized schedule of costs the
applicant expended, or committed to be
expended, before October 16, 1986, on
the application, accompanied by sup-
porting documentation including but
not limited to:
(i) Dated invoices for maps, surveys,
supplies, geophysical and geotechnical
services, engineering services, legal
services, document reproduction, and
other items related to the preparation
of the application, and