§ 292.209

(1) The date on which the natural watercourse was protected;
(2) The statutory authority under which the natural watercourse was protected; and
(3) The Federal or state agency, or political subdivision of the state, that is in charge of administering the natural watercourse.

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

§ 292.209 Exceptions from requirements 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 exemption is filed for a project located at a Government dam, as defined in section 3(10) of the Federal Power Act, at which non-Federal hydroelectric development is permissible; or
   (2) An application for license or exemption was filed and accepted before October 16, 1986.

(b) The requirements in §§ 292.208(b) (1) and (3) do not apply if an application for license or exemption was filed before October 16, 1986, and is accepted for filing by the Commission before October 16, 1989.

(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 pursuant to § 292.210; and
   (2) The Commission grants the petition.


(a) An applicant covered by § 292.203(c) whose application for license or exemption was filed on or after October 16, 1986, 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 applicant committed substantial monetary resources (as that term is defined in § 292.202(r)) to the development of the project.

(b) Subject to rebuttal under paragraph (d)(7)(ii) of this section, a showing of the commitment of substantial monetary resources will be presumed if the applicant held a preliminary permit 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 application 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 license or exemption was filed on or after October 16, 1986, but before March 23, 1987, the petition must have been filed by June 22, 1987.

(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, conforming to the requirements set out in § 385.2010(h) of this chapter, certifying that the applicant has served the petition on the Federal and State agencies required to be consulted by the applicant pursuant to § 4.38 of this chapter;
   (2) Documentation of any issued preliminary permits for the project;
   (3) An itemized statement of the total costs expended on the application;
   (4) An itemized schedule of costs the applicant expended, or committed to be expended, before October 16, 1986, on the application, accompanied by supporting 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
Federal Energy Regulatory Commission

§ 292.211

(i) Written contracts and other written documentation demonstrating a commitment made before October 16, 1986, to expend monetary resources on the preparation of the application, together with evidence that those monetary resources were actually expended; and

(5) Correspondence or other documentation to support the items listed in paragraphs (d)(3) and (d)(4) of this section to show that the expenses presented were directly related to the preparation of the application.

(6) The applicant must include in its total cost statement and in its schedule of the costs expended or committed to be expended before October 16, 1986, the value of services that were performed by the applicant itself instead of contracted out.

(7)(i) If the applicant held a preliminary permit for the project and had completed pre-filing consultation pursuant to §4.38 of this chapter prior to October 16, 1986, the applicant may, instead of submitting the information listed in paragraphs (d)(3), (d)(4), and (d)(5) of this section, submit a statement identifying the preliminary permit by project number.

(ii) If any interested person objects (pursuant to §385.211 of this chapter) to the presumption in paragraph (b) of this section, the applicant must supply the information listed in paragraphs (d)(3), (d)(4), and (d)(5) of this section.

(8) If the application is deficient pursuant to §4.32(e) of this chapter, the applicant may file the AEE petition with the application for license or exemption or at any time before the Commission issues the license or exemption.

(e) Contents of petition. (a) The AEE petition must identify the project and request that the Commission make an initial determination on the adverse environmental effects requirements in §292.208(b)(1).

(b) In making this determination, the Director will consider the following:

(1) Any proposed mitigative measures;
(2) The consistency of the proposal with local, regional, and national resource plans and programs;
(3) The mandatory terms and conditions of fish and wildlife agencies under section 210(j) of PURPA, or section 30(c) of the Federal Power Act; or the recommended terms and conditions of fish and wildlife agencies under Section