

electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility.

(3) Fundamental use test. For the purposes of satisfying paragraph (d)(2) of this section, the electrical, thermal, chemical and mechanical output of the cogeneration facility will be considered used fundamentally for industrial, commercial, or institutional purposes and not intended fundamentally for sale to an electric utility if at least 50 percent of the aggregate of such output, on an annual basis, is used for industrial, commercial, residential or institutional purposes. In addition, applicants for facilities that do not meet this safe harbor standard may present evidence to the Commission that the facilities should nevertheless be certified given state laws applicable to sales of electric energy or unique technological, efficiency, economic, and variable thermal energy requirements.

(4) For purposes of paragraphs (d)(1) and (d)(2) of this section, a new cogeneration facility of 5 MW or smaller will be presumed to satisfy the requirements of those paragraphs.

(5) For purposes of paragraph (d)(1) of this section, where a thermal host existed prior to the development of a new cogeneration facility whose thermal output will supplant the thermal source previously in use by the thermal host, the thermal output of such new cogeneration facility will be presumed to satisfy the requirements of paragraph (d)(1).

[45 FR 17972, Mar. 20, 1980, as amended by Order 478, 52 FR 28467, July 30, 1987; Order 575, 60 FR 4857, Jan. 25, 1995; Order 671, 71 FR 7868, Feb. 15, 2006]

§ 292.207 Procedures for obtaining qualifying status.

(a) *Self-certification and pre-authorized Commission recertification*—1) *Self-certification*. (i) A small power production facility or cogeneration facility that meets the applicable criteria established in § 292.203 is a qualifying facility.

(ii) The owner or operator of a facility or its representative self-certifying under this section must file with the

Commission, and concurrently serve on each electric utility with which it expects to interconnect, transmit or sell electric energy to or purchase supplementary, standby, back-up and maintenance power, and the State regulatory authority of each state where the facility and each affected utility is located, a notice of self-certification which contains a completed Form 556.

(iii) Subsequent notices of self-recertification for the same facility may reference prior notices or prior Commission certifications, and need only refer to changes which have occurred with respect to the facility since the prior notice or the prior Commission certification.

(iv) Notices of self-certification or self-recertification, other than for new cogeneration facilities, will not be published in the FEDERAL REGISTER. Notices of self-certification or self-recertification of new cogeneration facilities will be published in the FEDERAL REGISTER; such self-certifications and self-recertifications should include a form of notice suitable for publication in the FEDERAL REGISTER.

(2) *Pre-authorized Commission recertification*. (i) For purposes of paragraph (b) of this section, the following alterations or modifications are not considered substantial alterations or modifications and will not result in revocation of qualifying status previously granted by the Commission pursuant to paragraph (b) of this section:

(A) A change which does not affect the upstream ownership of the facility;

(B) A change in the installation or operation date;

(C) A change in the manufacturer of the power generation equipment selected for the facility's installation when there is no change in capacity or operating characteristics;

(D) A change in the location of a cogeneration facility, or a small power production facility, if the new location would not cause the facility to violate the 80 MW limitation of § 292.204(a)(1);

(E) A decrease in the amount of natural gas or oil or any change in the amount of other fuel used by a cogeneration facility, provided that the efficiency value and the operating value calculation for the facility remain at or above the values stated when the

§ 292.207

18 CFR Ch. I (4-1-07 Edition)

certification or recertification order was issued;

(F) A decrease in the amount of fossil fuel used by a small power production facility;

(G) A change in the primary energy source of a small power production facility, provided that the facility continues to comply with the requirements of § 292.204;

(H) An additional use of a cogeneration facility's thermal output, if the original uses are as stated when the certification order was issued;

(I) An increase in the efficiency value of a cogeneration facility or an increase in the operating value of a cogeneration facility determined in accordance with § 292.205;

(J) A decrease in the power production capacity of a small power production facility;

(K) A change in the power production capacity of a cogeneration facility if the efficiency value and the operating value calculation for the facility remain at or above the values stated when the certification or recertification order was issued; or

(L) A change in the purchaser of the cogeneration facility's thermal output, when there is no change in the specified thermal application or process.

(ii) The owner or operator of a qualifying facility that has been certified under paragraph (b) of this section must file with the Commission notice of each change listed in this subsection, and must concurrently serve a copy of such notice on each electric utility with which it expects to interconnect, transmit or sell electric energy to, or purchase supplementary, standby, back-up and maintenance power, and the State regulatory authority of each state where the facility and each affected electric utility is located.

(b) *Optional procedure*—(1) *Application for Commission certification.* In lieu of the certification procedures in paragraph (a) of this section, an owner or operator of a facility or its representative may file with the Commission an application for Commission certification that the facility is a qualifying facility. The application must be accompanied by the fee prescribed by part 381 of this chapter.

(2) *General contents of application.* The application must include a completed Form 556.

(3) *Commission action.* (i) Within 90 days of the later of the filing of an application or the filing of a supplement, amendment or other change to the application, the Commission will either: inform the applicant that the application is deficient; or issue an order granting or denying the application; or toll the time for issuance of an order. Any order denying certification shall identify the specific requirements which were not met. If the Commission does not act within 90 days of the date of the latest filing, the application shall be deemed to have been granted.

(ii) For purposes of paragraph (b) of this section, the date an application is filed is the date by which the Office of the Secretary has received all of the information and the appropriate filing fee necessary to comply with the requirements of this Part.

(4) *Notice.* The applicant must include a form of notice of the application suitable for publication in the FEDERAL REGISTER in accordance with the specifications in § 385.203(d) of this chapter. The form of notice shall be on electronic media as specified by the Secretary.

(c) *Notice requirements for facilities of 500 kW or more.* An electric utility is not required to purchase electric energy from a facility with a design capacity of 500 kW or more until 90 days after the facility notifies the utility that it is a qualifying facility, or 90 days after the facility has applied to the Commission under paragraph (b) of this section.

(d) *Revocation of qualifying status.*

(1)(i) If a qualifying facility fails to conform with any material facts or representations presented by the cogenerator or small power producer in its submittals to the Commission, the notice of self-certification of the qualifying status of the facility, pre-authorized Commission re-certification notice, or Commission order certifying the qualifying status of the facility may no longer be relied upon. At that point, if the facility continues to conform to the Commission's qualifying criteria under this part, the cogenerator or small power producer may file

either a notice of self-recertification of qualifying status pursuant to the requirements of paragraph (a)(1) of this section, a pre-authorized Commission recertification notice pursuant to the requirements of paragraph (a)(2) of this section, or an application for Commission recertification pursuant to the requirements of paragraph (b) of this section, as appropriate.

(ii) The Commission may, on its own motion or on the motion of any person, revoke the qualifying status of a facility that has been certified under paragraph (b) of this section, if the facility fails to conform to any of the Commission's qualifying facility criteria under this part.

(iii) The Commission may, on its own motion or on the motion of any person, revoke the qualifying status of a self-certified or self-recertified qualifying facility if it finds that the self-certified or self-recertified qualifying facility does not meet the applicable requirements for qualifying facilities.

(2) Prior to undertaking any substantial alteration or modification of a qualifying facility which has been certified under paragraph (b) of this section, a small power producer or cogenerator may apply to the Commission for a determination that the proposed alteration or modification will not result in a revocation of qualifying status. This application for Commission recertification of qualifying status should be submitted in accordance with paragraph (b) of this section.

[45 FR 17972, Mar. 20, 1980, as amended by Order 70-A, 45 FR 33603, May 20, 1980; Order 70-B, 45 FR 52780, Aug. 8, 1980; Order 225, 47 FR 19058, May 3, 1982; Order 435, 50 FR 40358, Oct. 3, 1985; Order 494, 53 FR 15381, Apr. 29, 1988; Order 575, 60 FR 4858, Jan. 25, 1995; Order 593, 62 FR 1283, Jan. 9, 1997; Order 647, 69 FR 32439, June 10, 2004; Order 671, 71 FR 7868, Feb. 15, 2006]

§ 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, a State or National wild and scenic river system; or

(ii) The State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural or scenic attributes which would be adversely affected by hydroelectric development; and

(3) The project meets the terms and conditions set by the appropriate fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

(c) For the Commission to make the findings in paragraph (b) of this section an applicant must:

(1) Comply with the applicable hydroelectric licensing requirements in Part 4 of this chapter, including:

(i) Completing the pre-filing consultation process under § 4.38 of this chapter, including performing any environmental studies which may be required under §§ 4.38(b)(2)(i)(D) through (F) of this chapter; and

(ii) Submitting with its application an environmental report that meets the requirements of § 4.41(f) of this chapter, regardless of project size;

(2) State whether the project is located on any segment of a natural watercourse which:

(i) Is included in or designated for potential inclusion in:

(A) The National Wild and Scenic River System (28 U.S.C. 1271-1278 (1982)); or

(B) A State wild and scenic river system;