

## § 292.209

(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:

(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.

(d) Any application covered by paragraph (a), (b), or (c) of this section is exempted from the moratorium imposed

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by section 8(e) of the Electric Consumers Protection Act of 1986, Pub. L. No. 99-495.

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## § 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 October 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 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;