(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. 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).

(f) The Director of the Office of Energy Projects will make the initial determination on the AEE petition. 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
10(j) of the Federal Power Act, whichever is appropriate; and
(4) Any other information which the Director believes is relevant to consider.

(g) Initial finding on the petition. The Director of the Office of Energy Projects will make the initial determination on the AEE petition after the close of the public notice period for the accepted application. If the Director's initial determination finds:

(1) No substantial adverse effect on the environment, the Commission must wait at least 45 days before making a final determination that the project satisfies the requirements of §292.208(b)(1).

(2) A substantial adverse effect on the environment, the applicant may file, within 90 days of the initial finding that the project does not satisfy the requirements in §292.208(b)(1), proposed measures to mitigate the adverse environmental effects found.

(3)(i) The Commission will provide written notice of the Director's initial finding on the petition to the applicant, to the federal and state agencies that the applicant must consult under §4.38 of this chapter and to any intervenors in the proceeding.

(ii) The Commission will publish notice of the Director's initial finding in the FEDERAL REGISTER.

(h) Notice and comment on the mitigative measures. (1) The Commission will issue notice of the mitigative measures filed by an applicant under paragraph (g)(2) of this section and will publish the notice in the FEDERAL REGISTER. The mitigative measures will be on file and available for inspection or copying during regular business hours in the Public Reference Room maintained by the Division of Public Information;

(2) The Commission will provide the State and interested persons within 90 days from the date the notice is issued to review and submit comments on the mitigative measures. The applicant for license or exemption has 15 days after the expiration of the public comment period to respond to the comments filed with the Commission.

(i) Material amendments to application. The proposed mitigative measures filed under paragraph (g)(2) of this section will not be considered a material amendment to the application unless the Commission finds that the proposed measures are unnecessary to, or exceed the scope of, mitigating substantial adverse effects. If the Commission finds the proposed mitigative measures constitute a material amendment, the application will be considered filed with the Commission on the date on which the applicant filed the proposed mitigative measures, and all other provisions of §4.35(a) of this chapter will apply.

(j) Final determination on the petition. The Commission will make a final determination on the petition at the time the Commission issues a license or exemption for the project.

(k) Presumption. (1) If, between the Commission's initial and final findings on the AEE petition, the State does not take any action under §292.208(b)(2), the failure to take action can be the basis for a presumption that there is not substantial adverse effect on the environment (as that term is defined in §292.202(q)).

(2) If the presumption in paragraph (k)(1) of this section comes into effect, it:

(i) Is only available for those adverse effects related to the natural, recreational, cultural, or scenic attributes of the environment;

(ii) Can only operate during the time between the Commission's initial and final findings on the AEE petition; and

(iii) Has no affect on the Commission's independent obligation to find that the project will not have a substantial adverse effect on the environment under §292.208(b)(1).

(3) The presumption in paragraph (k)(1) of this section can be rebutted if:

(i) The Commission determines that the project will have a substantial adverse effect on the environment related to the environmental attributes listed in paragraph (k)(2)(i) of this section; or

(ii) Any interested person, including a State, demonstrates that the project will have a substantial adverse effect
Federal Energy Regulatory Commission

§ 292.301 Scope.

(a) Applicability. This subpart applies to the regulation of sales and purchases between qualifying facilities and electric utilities.

(b) Negotiated rates or terms. Nothing in this subpart:

1. Limits the authority of any electric utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by this subpart; or

2. Affects the validity of any contract entered into between a qualifying facility and an electric utility for any purchase.

§ 292.302 Availability of electric utility system cost data.

(a) Applicability. (1) Except as provided in paragraph (a)(2) of this section, paragraph (b) applies to each electric utility, in any calendar year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

2. Each utility having total sales of electric energy for purposes other than resale of less than one billion kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding year, shall not be subject to the provisions of this section until June 30, 1982.

(b) General rule. To make available data from which avoided costs may be derived, not later than November 1, 1980, June 30, 1982, and not less often than every two years thereafter, each regulated electric utility described in paragraph (a) of this section shall provide to its State regulatory authority, and shall maintain for public inspection, and each nonregulated electric utility described in paragraph (a) of this section shall maintain for public inspection, the following data:

1. The estimated avoided cost on the electric utility’s system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of not more than 100 megawatts for systems with peak demand of 1000 megawatts or more, and in blocks equivalent to not more than 10 percent of the system peak demand for systems of less than 1000 megawatts. The avoided costs shall be stated on a cents per kilowatt-hour basis, during daily and seasonal peak and off-peak periods, by year, for the current calendar year and each of the next 5 years;

2. The electric utility’s plan for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding 10 years; and

3. The estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt-hour, and the associated energy costs of each unit, expressed in cents per kilowatt hour. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases.

(c) Special rule for small electric utilities. (1) Each electric utility (other than any electric utility to which paragraph (b) of this section applies) shall, upon request:

1. Provide comparable data to that required under paragraph (b) of this