

## TAPOCO PROJECT LICENSING ACT OF 2004

OCTOBER 6, 2004.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources,  
submitted the following

### R E P O R T

[To accompany H.R. 4667]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 4667) to authorize and facilitate hydroelectric power licensing of the Tapoco Project, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### PURPOSE OF THE BILL

The purpose of H.R. 4667 is to authorize and facilitate hydroelectric power licensing of the Tapoco Project, and for other purposes.

#### BACKGROUND AND NEED FOR LEGISLATION

In 1999, Alcoa Power Generating Inc. (APGI), the operator of the Tapoco Project, a system of four hydropower dams on the Little Tennessee and Cheoah rivers that straddle the North Carolina-Tennessee border, began work on a re-licensing application with the Federal Energy Regulatory Commission (FERC) to continue to operate the Tapoco Project. During the re-licensing process, APGI discovered that a portion of the project, known as Chilhowee Reservoir, inundates approximately two miles of government-owned lands along Abrams Creek and three other streams within the boundary of the Great Smoky Mountains National Park. The Federal Power Act and the Park's enabling legislation specifically prohibit hydropower projects within the Park. Thus, FERC does not have the legal authority to issue the license for the hydropower projects that flood lands within authorized national park bound-

aries. The record from the 1950s and earlier of how the licensing was allowed to initially occur is unclear.

To resolve this situation, H.R. 4667 would require the Secretary of the Interior to transfer approximately 100 acres of submerged lands within the Park along several creeks to APGI and grant jurisdiction to FERC to re-license the Project. In exchange, the Park would receive fee title to 186 acres of forested uplands within the boundary that APGI owns and retain management and enforcement rights over 100 acres transferred to APGI. Meanwhile, in a related matter not included in the bill, but contingent on the success of passage of the bill and the re-licensing effort is a Settlement Agreement developed among APGI, the Department of the Interior, the U.S. Forest Service, the States of Tennessee and North Carolina, the Eastern Band of Cherokee Indians, local governments and several NGOs. The Settlement Agreement includes the following: (1) the Nature Conservancy (TNC) will donate a 400 acre permanent conservation easement within the Park boundary; (2) APGI will donate conservation easements to the TNC on several parcels of land; and (3) APGI will establish a mitigation fund for the project area in Tennessee that will make \$100,000 annually to the National Park Service and other Federal and State agencies.

#### COMMITTEE ACTION

H.R. 4667 was introduced by Congressman John Duncan (R-TN) on June 23, 2004. The bill was referred to the Committee on Resources, and additionally to the Committee on Energy and Commerce. Within the Resources Committee, the bill was referred to the Subcommittee on National Parks, Recreation and Public Lands and the Subcommittee on Water and Power. On September 14, 2004, the Subcommittee on National Parks, Recreation and Public Lands held a hearing on the bill. On September 15, 2004, the Full Resources Committee met to consider the bill. The Subcommittee on National Parks, Recreation and Public Lands and the Subcommittee on Water and Power were discharged from further consideration by unanimous consent. No amendments were offered and the bill was then favorably reported to the House of Representatives by unanimous consent.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

#### COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has in-

cluded in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to authorize and facilitate hydroelectric power licensing of the Tapoco Project, and for other purposes.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 17, 2004.*

Hon. RICHARD W. POMBO,  
*Chairman, Committee on Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4667, the Tapoco Project Licensing Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll, who can be reached at 226-2860.

Sincerely,

ELIZABETH M. ROBINSON  
(For Douglas Holtz-Eakin, Director).

Enclosure.

*H.R. 4667—Tapoco Project Licensing Act of 2004*

CBO estimates that implementing H.R. 4667 would cost \$6 million over the 2005-2009 period, assuming appropriation of the necessary amounts. Enacting the bill would not affect direct spending or revenues. H.R. 4667 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no significant costs on state, local, or tribal governments.

H.R. 4667 would authorize the Secretary of the Interior to exchange 100 acres of land within the Great Smoky Mountains National Park in Tennessee for 186 acres of other land within the authorized boundary of that park owned by Alcoa Power Generating Inc. (APGI). APGI would use the land it receives for the Tapoco Hydroelectric Project. According to the National Park Service (NPS), the federal land to be conveyed currently generates no receipts and is not expected to do so over the next 10 years. Hence, we estimate that the proposed exchange would not affect offsetting receipts (a credit against direct spending). We estimate that the agency would spend about \$30,000 in 2005 to complete the transaction, assuming the availability of appropriated funds.

H.R. 4667 also would authorize the Secretaries of Agriculture and the Interior to acquire certain other land that is currently owned by APGI. Based on information from APGI and local tax assessors regarding the value of that land, CBO estimates that the federal government would spend \$6 million over the 2006–2009 period to acquire that land, assuming appropriation of the necessary funds. We also estimate that any resulting increase in federal spending for land management would total less than \$500,000 a year.

On June 23, 2004, CBO transmitted a cost estimate for S. 2319, the Tapoco Project Licensing Act of 2004, as ordered reported by the Senate Committee on Energy and Natural Resources on June 16, 2004. H.R. 4667 and S. 2319 are similar, and our cost estimates are the same.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

