

Union Calendar No. 455

108TH CONGRESS
2D SESSION

H. R. 4667

[Report No. 108–721, Parts I and II]

To authorize and facilitate hydroelectric power licensing of the Tapoco Project, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2004

Mr. DUNCAN introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

OCTOBER 4, 2004

Reported from the Committee on Energy and Commerce

OCTOBER 6, 2004

Reported from the Committee on Resources, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

A BILL

To authorize and facilitate hydroelectric power licensing of the Tapoco Project, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Tapoco Project Licens-
3 ing Act of 2004”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **APGI.**—The term “APGI” means Alcoa
7 Power Generating Inc., its successors and assigns.

8 (2) **COMMISSION.**—The term “Commission”
9 means the Federal Energy Regulatory Commission.

10 (3) **MAP.**—The term “map” means the map en-
11 titled “Tapoco Hydroelectric Project, P-2169, Set-
12 tlement Agreement, Appendix B, Proposed Land
13 Swap Areas, National Park Service and APGI”,
14 numbered TP514, Issue No. 9, and dated June 8,
15 2004.

16 (4) **PARK.**—The term “Park” means Great
17 Smoky Mountains National Park.

18 (5) **PROJECT.**—The term “Project” means the
19 Tapoco Hydroelectric Project, FERC Project No.
20 2169, including the Chilhowee Dam and Reservoir in
21 the State of Tennessee.

22 (6) **SECRETARY.**—The term “Secretary” means
23 the Secretary of the Interior.

24 **SEC. 3. LAND EXCHANGE.**

25 (a) **AUTHORIZATION.**—

1 (1) IN GENERAL.—Upon the conveyance by
2 APGI of title acceptable to the Secretary of the land
3 identified in paragraph (2), the Secretary shall si-
4 multaneously convey to APGI title to the land iden-
5 tified in paragraph (3).

6 (2) DESCRIPTION OF LAND TO BE CONVEYED
7 BY APGI.—The land to be conveyed by APGI to the
8 Secretary is the approximately 186 acres of land,
9 subject to any encumbrances existing before Feb-
10 ruary 21, 2003—

11 (A) within the authorized boundary of the
12 Park, located northeast of United States High-
13 way 129 and adjacent to the APGI power line;
14 and

15 (B) as generally depicted on the map as
16 “Proposed Property Transfer from APGI to
17 National Park Service”.

18 (3) DESCRIPTION OF LAND TO BE CONVEYED
19 BY THE SECRETARY.—The land to be conveyed by
20 the Secretary to APGI is the approximately 110
21 acres of land within the Park that is—

22 (A) adjacent to or flooded by the
23 Chilhowee Reservoir;

24 (B) within the boundary of the Project as
25 of February 21, 2003; and

1 (C) as generally depicted on the map as
2 “Proposed Property Transfer from National
3 Park Service to APGI”.

4 (b) MINOR ADJUSTMENTS TO CONVEYED LAND.—
5 The Secretary and APGI may mutually agree to make
6 minor boundary or acreage adjustments to the land identi-
7 fied in subsection (a).

8 (c) OPPORTUNITY TO MITIGATE.—If the Secretary
9 determines that all or part of the land to be conveyed to
10 the Secretary under subsection (a)(2) is unsuitable for in-
11 clusion in the Park, APGI shall have the opportunity to
12 make the land suitable for inclusion in the Park.

13 (d) CONSERVATION EASEMENT.—The Secretary shall
14 reserve a conservation easement over any land transferred
15 to APGI under subsection (a)(3) that, subject to any
16 terms and conditions imposed by the Commission in any
17 license that the Commission may issue for the Project.
18 The conservation easement shall—

19 (1) specifically prohibit any development of the
20 land by APGI, other than any development that is
21 necessary for the continued operation and mainte-
22 nance of the Chilhowee Reservoir;
23 (2) authorize public access to the easement
24 area, subject to National Park Service regulations;
25 and

1 (3) authorize the National Park Service to en-
2 force Park regulations on the land and in and on the
3 waters of Chilhowee Reservoir lying on the land, to
4 the extent not inconsistent with any license condition
5 considered necessary by the Commission.

6 (e) APPLICABILITY OF CERTAIN LAWS.—Section 5(b)
7 of Public Law 90–401 (16 U.S.C. 460l–22(b)), shall not
8 apply to the land exchange authorized under this section.

9 (f) REVERSION.—

10 (1) IN GENERAL.—The deed from the Secretary
11 to APGI shall contain a provision that requires the
12 land described in subsection (a)(3) to revert to the
13 United States if—

14 (A) the Chilhowee Reservoir ceases to
15 exist; or

16 (B) the Commission issues a final order
17 decommissioning the Project from which no fur-
18 ther appeal may be taken.

19 (2) APPLICABLE LAW.—A reversion under this
20 subsection shall not eliminate APGI’s responsibility
21 to comply with all applicable provisions of the Fed-
22 eral Power Act (16 U.S.C. 791a et seq.), including
23 regulations.

24 (g) BOUNDARY ADJUSTMENT.—

1 (1) IN GENERAL.—On completion of the land
 2 exchange authorized under this section, the Sec-
 3 retary shall—

4 (A) adjust the boundary of the Park to in-
 5 clude the land described in subsection (a)(2);
 6 and

7 (B) administer any acquired land as part
 8 of the Park in accordance with applicable law
 9 (including regulations).

10 (2) NATIONAL PARK SERVICE LAND.—Notwith-
 11 standing the exchange of land under this section, the
 12 land described in subsection (a)(3) shall remain
 13 within the boundary of the Park.

14 (3) PUBLIC NOTICE.—The Secretary shall pub-
 15 lish in the Federal Register notice of any boundary
 16 revision under paragraph (1).

17 **SEC. 4. PROJECT LICENSING.**

18 Notwithstanding the continued inclusion of the land
 19 described in section 3(a)(3) in the boundary of the Park
 20 (including any modification made pursuant to section
 21 3(b)) on completion of the land exchange, the Commission
 22 shall have jurisdiction to license the Project.

23 **SEC. 5. LAND ACQUISITION.**

24 (a) IN GENERAL.—The Secretary or the Secretary of
 25 Agriculture may acquire, from willing owners only, by pur-

1 chase, donation, or exchange, any land or interest in land
2 that—

3 (1) may be transferred by APGI to any non-
4 governmental organization; and

5 (2) is identified as “Permanent Easement” or
6 “Term Easement” on the map entitled “Tapoco Hy-
7 droelectric Project, P-2169, Settlement Agreement,
8 Appendix B, Proposed Land Conveyances in Ten-
9 nessee”, numbered TP616, Issue No. 15, and dated
10 March 11, 2004.

11 (b) LAND ACQUIRED BY THE SECRETARY OF THE IN-
12 TERIOR.—The Secretary shall—

13 (1) adjust the boundary of the Park to include
14 any land or interest in land acquired by the Sec-
15 retary under subsection (a);

16 (2) administer any acquired land or interest in
17 land as part of the Park in accordance with applica-
18 ble law (including regulations); and

19 (3) publish notice of the adjustment in the Fed-
20 eral Register.

21 (c) LAND ACQUIRED BY THE SECRETARY OF AGRI-
22 CULTURE.—

23 (1) BOUNDARY ADJUSTMENT.—The Secretary
24 of Agriculture shall—

1 (A) adjust the boundary of the Cherokee
2 National Forest to include any land acquired
3 under subsection (a);

4 (B) administer any acquired land or inter-
5 est in land as part of the Cherokee National
6 Forest in accordance with applicable law (in-
7 cluding regulations); and

8 (C) publish notice of the adjustment in the
9 Federal Register.

10 (2) MANAGEMENT.—The Secretary of Agri-
11 culture shall evaluate the feasibility of managing any
12 land acquired by the Secretary of Agriculture under
13 subsection (a) in a manner that retains the primi-
14 tive, back-country character of the land.

15 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

16 There are authorized to be appropriated such sums
17 as are necessary to carry out this Act.

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