

108TH CONGRESS
2D SESSION

S. 2319

To authorize and facilitate hydroelectric power licensing of the Tapoco Project.

IN THE SENATE OF THE UNITED STATES

APRIL 19, 2004

Mr. ALEXANDER introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize and facilitate hydroelectric power licensing of the Tapoco Project.

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to resolve jurisdictional
8 issues regarding hydroelectric power licensing of FERC
9 Project No. 2169 (the Tapoco Project or Project) by au-
10 thorizing—

1 (1) the Secretary of the Interior to complete, as
2 soon as practicable after the date of enactment of
3 this Act, an exchange of certain land; and

4 (2) after the exchange of land is completed, the
5 Federal Energy Regulatory Commission to license
6 the Project.

7 **SEC. 3. DEFINITIONS.**

8 In this Act:

9 (1) APGI.—The term “APGI” means Alcoa
10 Power Generating Inc. (including its successors and
11 assigns).

12 (2) ATTORNEY GENERAL.—The term “Attorney
13 General” means the Attorney General of the United
14 States.

15 (3) COMMISSION.—The term “Commission”
16 means the Federal Energy Regulatory Commission.

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

19 (5) PROJECT.—The term “Project” means
20 FERC Project No. 2169 (the Tapoco Project or
21 Project), including the Chillhowee Dam and reservoir
22 in the State.

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

1 (7) SETTLEMENT AGREEMENT.—The term
2 “Settlement Agreement” means the agreement filed
3 with the Commission among the settling parties
4 reached in the licensing of the Project that describes
5 the operational and protection, mitigation, and en-
6 hancement measures for operation of the Project.

7 (8) STATE.—The term “State” means the State
8 of Tennessee.

9 **SEC. 4. LAND EXCHANGE.**

10 (a) IN GENERAL.—The Secretary shall offer to ac-
11 quire from APGI—

12 (1) subject to any encumbrances existing before
13 February 21, 2003, approximately 186 acres of land
14 (within the authorized boundary of the Park) located
15 northeast of United States Highway 129 and south-
16 west of the Tennessee Valley Authority power line;
17 in exchange for

18 (2) approximately 100 acres of land within the
19 Park that are—

20 (A) adjacent to or flooded by the
21 Chilhowee Reservoir;

22 (B) within the boundary of the Tapoco
23 Project as of February 21, 2003; and

24 (C) shown on the map entitled “Tapoco
25 Hydroelectric Project, P-2169, Settlement

1 Agreement, Appendix C-5, Proposed Land
2 Swap Areas, National Park Service and APGI”,
3 numbered TP514, Issue No. 8, and dated
4 March 11, 2004.

5 (b) CONSERVATION EASEMENT.—The Secretary shall
6 reserve a conservation easement over any land transferred
7 to APGI that shall—

8 (1) specifically prohibit any development of the
9 land by APGI, other than any development that is—

10 (A) necessary for the continued operation
11 and maintenance of the Chilhowee Reservoir; or

12 (B) required by the Commission;

13 (2) authorize public access to the easement area
14 subject to Park regulations and the terms and re-
15 strictions imposed by the Commission in any license
16 the Commission may issue for the project; and

17 (3) authorize the National Park Service to en-
18 force Park regulations on the land and in and on the
19 waters of Chilhowee Reservoir lying on the land, to
20 the extent not inconsistent with any license condi-
21 tions considered necessary by the Commission.

22 (c) REVERSION.—The deed from the Secretary to
23 APGI shall contain a provision that requires the fee simple
24 title for the Chilhowee Dam to revert to the United States
25 if the Dam is breached or removed.

1 (d) UNSUITABLE LAND.—

2 (1) IN GENERAL.—If the Secretary determines
3 that all or part of a tract of land acquired under
4 subsection (a) is unsuitable for the Park, the Sec-
5 retary shall provide APGI with an opportunity to
6 make the tract suitable for inclusion in the Park.

7 (2) LAND NOT SUITABLE.—If APGI is unable
8 to make the tract suitable for inclusion in the Park
9 (as determined by the Secretary) or elects not to
10 make the tract suitable for inclusion—

11 (A) the transfer of the land is voided, on
12 written notice from the Secretary to APGI; and

13 (B) the Secretary shall negotiate an acqui-
14 sition for inclusion in the Park of suitable land
15 that is—

16 (i) of approximately equal value to the
17 land acquired by APGI for inclusion in the
18 Park; and

19 (ii) within or adjacent to the boundary
20 of the Park.

21 (e) ACTION FOR FAIR MARKET VALUE OF LAND.—

22 (1) IN GENERAL.—If the Secretary determines
23 that negotiations for substitute land described in
24 subsection (d)(2)(B) are at an impasse, the Sec-

1 retary shall request the Attorney General to seek
2 compensation for—

3 (A) the fair market value of the land or in-
4 terests in land that would have been transferred
5 to the Park had the land not been affected by
6 the encumbrances or defects that made the land
7 unsuitable for inclusion in the Park; and

8 (B) the costs and litigation expenses of the
9 United States, including attorney fees.

10 (2) FUNDS.—All funds recovered from any ac-
11 tion under paragraph (1) shall—

12 (A) be immediately available, without fur-
13 ther appropriation from the Treasury, for use
14 by the Secretary for acquisition of land within
15 or adjacent to the boundaries of the Park from
16 willing sellers; and

17 (B) remain available until expended.

18 (3) EFFECT ON CONVEYANCE.—Nothing in this
19 subsection affects a conveyance by the United States
20 to APGI under subsection (a).

21 (f) BOUNDARY ADJUSTMENT.—

22 (1) IN GENERAL.—On completion of an ex-
23 change authorized under this section, the Secretary
24 shall—

1 (A) adjust the boundary of the Park to re-
2 flect the exchange; and

3 (B) administer any acquired land as part
4 of the Park in accordance with applicable law
5 (including regulations).

6 (2) PUBLIC NOTICE.—The Secretary shall pub-
7 lish in the Federal Register notice of any boundary
8 revised under this subsection.

9 (g) COMPLIANCE WITH OTHER LAWS.—An exchange
10 of land under this section is deemed to meet the require-
11 ments of—

12 (1) the National Environmental Policy Act of
13 1969 (42 U.S.C. 4321 et seq.);

14 (2) the National Historic Preservation Act (16
15 U.S.C. 470 et seq.); and

16 (3) the land exchange provisions of the Land
17 and Water Conservation Fund Act of 1965 (16
18 U.S.C. 460l–4 et seq.).

19 **SEC. 5. LICENSING.**

20 Notwithstanding any other provision of law, on com-
21 pletion of the land exchange or acquisition of equivalent
22 land under section 4, the Commission shall have jurisdic-
23 tion to license the Project .

24 **SEC. 6. LAND ACQUISITION.**

25 (a) SECRETARY OF THE INTERIOR.—

1 (1) IN GENERAL.—The Secretary may acquire,
2 for the United States, title to land in the State that
3 may be transferred by APGI to any nongovern-
4 mental organization (as shown on the map entitled
5 “Tapoco Hydroelectric Project, P-2169, Settlement
6 Agreement, Appendix C-5, Proposed Land Convey-
7 ances in Tennessee”, numbered TP616, Issue No.
8 15, and dated March 11, 2004) pursuant to the Set-
9 tlement Agreement.

10 (2) BOUNDARY ADJUSTMENT.—The Secretary
11 shall—

12 (A) adjust the boundary of the Park to in-
13 clude any land acquired under paragraph (1);
14 and

15 (B) publish notice of the adjustment in the
16 Federal Register.

17 (b) SECRETARY OF AGRICULTURE.—

18 (1) IN GENERAL.—The Secretary of Agriculture
19 may acquire, for the United States, title to land in
20 the State that may be transferred to any nongovern-
21 mental organization pursuant to the Settlement
22 Agreement described in subsection (a)(1).

23 (2) 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 paragraph (1); and

4 (B) publish notice of the adjustment in the
5 Federal Register.

6 (3) MANAGEMENT.—The Secretary of Agri-
7 culture shall evaluate whether it is feasible and prac-
8 ticable to manage any land acquired for the Cher-
9 okee National Forest under paragraph (1) in a man-
10 ner that retains the primitive, back-country char-
11 acter of the land.

12 **SEC. 7. AUTHORIZATION FOR APPROPRIATIONS.**

13 There are authorized to be appropriated such sums
14 as are necessary for the United States to acquire interests
15 in land and to otherwise effectuate the purposes and terms
16 of the land transfer provisions of the Settlement Agree-
17 ment.

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