

108TH CONGRESS
2D SESSION

S. 2319

AN ACT

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”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) APGI.—The term “APGI” means Alcoa
4 Power Generating Inc. (including its successors and
5 assigns).

6 (2) COMMISSION.—The term “Commission”
7 means the Federal Energy Regulatory Commission.

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

14 (4) PARK.—The term “Park” means Great
15 Smoky Mountains National Park.

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

20 (6) SECRETARY.—The term “Secretary” means
21 the Secretary of the Interior.

22 **SEC. 3. LAND EXCHANGE.**

23 (a) AUTHORIZATION.—

24 (1) IN GENERAL.—Upon the conveyance by
25 APGI of title acceptable to the Secretary of the land
26 identified in paragraph (2), the Secretary shall si-

1 multaneously convey to APGI title to the land iden-
2 tified in paragraph (3).

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

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

12 (B) as generally depicted on the map as
13 “Proposed Property Transfer from APGI to
14 National Park Service”.

15 (3) DESCRIPTION OF LAND TO BE CONVEYED
16 BY THE SECRETARY.—The land to be conveyed by
17 the Secretary to APGI are the approximately 110
18 acres of land within the Park that are—

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

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

23 (C) as generally depicted on the map as
24 “Proposed Property Transfer from National
25 Park Service to APGI”.

1 (b) MINOR ADJUSTMENTS TO CONVEYED LAND.—
2 The Secretary and APGI may mutually agree to make
3 minor boundary or acreage adjustments to the land identi-
4 fied in paragraphs (2) and (3) of subsection (a).

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

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

16 (1) specifically prohibit any development of the
17 land by APGI, other than any development that is
18 necessary for the continued operation and mainte-
19 nance of the Chilhowee Reservoir;

20 (2) authorize public access to the easement
21 area, subject to National Park Service regulations;
22 and

23 (3) authorize the National Park Service to en-
24 force Park regulations on the land and in and on the
25 waters of Chilhowee Reservoir lying on the land, to

1 the extent not inconsistent with any license condition
2 considered necessary by the Commission.

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

6 (f) REVERSION.—

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

11 (A) the Chilhowee Reservoir ceases to
12 exist; or

13 (B) the Commission issues a final order
14 decommissioning the Project from which no fur-
15 ther appeal may be taken.

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

21 (g) BOUNDARY ADJUSTMENT.—

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

1 (A) adjust the boundary of the Park to in-
2 clude the land described in subsection (a)(2);
3 and

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

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

11 (3) PUBLIC NOTICE.—The Secretary shall pub-
12 lish in the Federal Register notice of any boundary
13 revised under paragraph (1).

14 **SEC. 4. PROJECT LICENSING.**

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

20 **SEC. 5. LAND ACQUISITION.**

21 (a) IN GENERAL.—The Secretary or the Secretary of
22 Agriculture may acquire, by purchase, donation, or ex-
23 change, any land or interest in land that—

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

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

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

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

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

15 (3) publish notice of the adjustment in the Fed-
16 eral Register.

17 (c) LAND ACQUIRED BY THE SECRETARY OF AGRI-
18 CULTURE.—

19 (1) BOUNDARY ADJUSTMENT.—The Secretary
20 of Agriculture shall—

21 (A) adjust the boundary of the Cherokee
22 National Forest to include any land acquired
23 under subsection (a);

24 (B) administer any acquired land or inter-
25 est in land as part of the Cherokee National

1 Forest in accordance with applicable law (in-
2 cluding regulations); and

3 (C) publish notice of the adjustment in the
4 Federal Register.

5 (2) MANAGEMENT.—The Secretary of Agri-
6 culture shall evaluate the feasibility of managing any
7 land acquired by the Secretary of Agriculture under
8 subsection (a) in a manner that retains the primi-
9 tive, back-country character of the land.

10 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

11 There are authorized to be appropriated such sums
12 as are necessary to carry out this Act.

Passed the Senate September 15, 2004.

Attest:

Secretary.

108TH CONGRESS
2^D SESSION

S. 2319

AN ACT

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