

108TH CONGRESS  
2D SESSION

# H. R. 4667

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

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## 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

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## 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,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

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

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

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

11           (5) PROJECT.—The term “Project” means the  
12 Tapoco Hydroelectric Project, FERC Project No.  
13 2169, including the Chilhowee Dam and Reservoir in  
14 the State of Tennessee.

15           (6) SECRETARY.—The term “Secretary” means  
16 the Secretary of the Interior.

17 **SEC. 3. LAND EXCHANGE.**

18           (a) AUTHORIZATION.—

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

24           (2) DESCRIPTION OF LAND TO BE CONVEYED  
25 BY APGI.—The land to be conveyed by APGI to the

1 Secretary is the approximately 186 acres of land,  
2 subject to any encumbrances existing before Feb-  
3 ruary 21, 2003—

4 (A) within the authorized boundary of the  
5 Park, located northeast of United States High-  
6 way 129 and adjacent to the APGI power line;  
7 and

8 (B) as generally depicted on the map as  
9 “Proposed Property Transfer from APGI to  
10 National Park Service”.

11 (3) DESCRIPTION OF LAND TO BE CONVEYED  
12 BY THE SECRETARY.—The land to be conveyed by  
13 the Secretary to APGI is the approximately 110  
14 acres of land within the Park that is—

15 (A) adjacent to or flooded by the  
16 Chilhowee Reservoir;

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

19 (C) as generally depicted on the map as  
20 “Proposed Property Transfer from National  
21 Park Service to APGI”.

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

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

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

12                 (1) specifically prohibit any development of the  
13 land by APGI, other than any development that is  
14 necessary for the continued operation and mainte-  
15 nance of the Chilhowee Reservoir;

16                 (2) authorize public access to the easement  
17 area, subject to National Park Service regulations;  
18 and

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

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

4 (f) REVERSION.—

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

9 (A) the Chillhowee Reservoir ceases to  
10 exist; or

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

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

19 (g) BOUNDARY ADJUSTMENT.—

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

23 (A) adjust the boundary of the Park to in-  
24 clude the land described in subsection (a)(2);  
25 and

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

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

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

11 **SEC. 4. PROJECT LICENSING.**

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

17 **SEC. 5. LAND ACQUISITION.**

18 (a) IN GENERAL.—The Secretary or the Secretary of  
19 Agriculture may acquire, from willing owners only, by pur-  
20 chase, donation, or exchange, any land or interest in land  
21 that—

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

24 (2) is identified as “Permanent Easement” or  
25 “Term Easement” on the map entitled “Tapoco Hy-

1       droelectric Project, P–2169, Settlement Agreement,  
2       Appendix B, Proposed Land Conveyances in Ten-  
3       nessee”, numbered TP616, Issue No. 15, and dated  
4       March 11, 2004.

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

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

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

13              (3) publish notice of the adjustment in the Fed-  
14       eral Register.

15       (c) LAND ACQUIRED BY THE SECRETARY OF AGRICULTURE.—  
16

17              (1) BOUNDARY ADJUSTMENT.—The Secretary  
18       of Agriculture shall—

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

22                   (B) administer any acquired land or inter-  
23       est in land as part of the Cherokee National  
24       Forest in accordance with applicable law (in-  
25       cluding regulations); and

1                   (C) publish notice of the adjustment in the  
2                   Federal Register.

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

8 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

9                   There are authorized to be appropriated such sums  
10 as are necessary to carry out this Act.

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