

Public Law 108–343  
108th Congress

An Act

Oct. 18, 2004  
[S. 2319]

Tapoco Project  
Licensing Act  
of 2004.  
16 USC 403 note.

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

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Tapoco Project Licensing Act of 2004”.

16 USC 403 note.

**SEC. 2. DEFINITIONS.**

In this Act:

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

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

(3) **MAP.**—The term “map” means the map entitled “Tapoco Hydroelectric Project, P–2169, Settlement Agreement, Appendix B, Proposed Land Swap Areas, National Park Service and APGI”, numbered TP514, Issue No. 9, and dated June 8, 2004.

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

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

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

16 USC 403 note.

**SEC. 3. LAND EXCHANGE.**

(a) **AUTHORIZATION.**—

(1) **IN GENERAL.**—Upon the conveyance by APGI of title acceptable to the Secretary of the land identified in paragraph (2), the Secretary shall simultaneously convey to APGI title to the land identified in paragraph (3).

(2) **DESCRIPTION OF LAND TO BE CONVEYED BY APGI.**—The land to be conveyed by APGI to the Secretary is the approximately 186 acres of land, subject to any encumbrances existing before February 21, 2003—

(A) within the authorized boundary of the Park, located northeast of United States Highway 129 and adjacent to the APGI power line; and

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

(3) **DESCRIPTION OF LAND TO BE CONVEYED BY THE SECRETARY.**—The land to be conveyed by the Secretary to APGI

are the approximately 110 acres of land within the Park that are—

- (A) adjacent to or flooded by the Chilhowee Reservoir;
- (B) within the boundary of the Project as of February 21, 2003; and
- (C) as generally depicted on the map as “Proposed Property Transfer from National Park Service to APGI”.

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

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

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

(1) specifically prohibit any development of the land by APGI, other than any development that is necessary for the continued operation and maintenance of the Chilhowee Reservoir;

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

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

(e) APPLICABILITY OF CERTAIN LAWS.—Section 5(b) of Public Law 90-401 (16 U.S.C. 4601-22(b)), shall not apply to the land exchange authorized under this section.

(f) REVERSION.—

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

(A) the Chilhowee Reservoir ceases to exist; or

(B) the Commission issues a final order decommissioning the Project from which no further appeal may be taken.

(2) APPLICABLE LAW.—A reversion under this subsection shall not eliminate APGI's responsibility to comply with all applicable provisions of the Federal Power Act (16 U.S.C. 791a et seq.), including regulations.

(g) BOUNDARY ADJUSTMENT.—

(1) IN GENERAL.—On completion of the land exchange authorized under this section, the Secretary shall—

(A) adjust the boundary of the Park to include the land described in subsection (a)(2); and

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

(2) NATIONAL PARK SERVICE LAND.—Notwithstanding the exchange of land under this section, the land described in subsection (a)(3) shall remain in the boundary of the Park.

Federal Register,  
publication.

(3) PUBLIC NOTICE.—The Secretary shall publish in the Federal Register notice of any boundary revised under paragraph (1).

16 USC 403 note.

**SEC. 4. PROJECT LICENSING.**

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

16 USC 403 note.

**SEC. 5. LAND ACQUISITION.**

(a) IN GENERAL.—The Secretary or the Secretary of Agriculture may acquire, by purchase, donation, or exchange, any land or interest in land that—

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

(2) is identified as “Permanent Easement” or “Term Easement” on the map entitled “Tapoco Hydroelectric Project, P-2169, Settlement Agreement, Appendix B, Proposed Land Conveyances in Tennessee”, numbered TP616, Issue No. 15, and dated March 11, 2004.

(b) LAND ACQUIRED BY THE SECRETARY OF THE INTERIOR.—The Secretary shall—

(1) adjust the boundary of the Park to include any land or interest in land acquired by the Secretary under subsection (a);

(2) administer any acquired land or interest in land as part of the Park in accordance with applicable law (including regulations); and

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

Federal Register,  
publication.

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

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

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

(B) administer any acquired land or interest in land as part of the Cherokee National Forest in accordance with applicable law (including regulations); and

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

Federal Register,  
publication.

(2) MANAGEMENT.—The Secretary of Agriculture shall evaluate the feasibility of managing any land acquired by the Secretary of Agriculture under subsection (a) in a manner that retains the primitive, back-country character of the land.

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

16 USC 403 note.

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

Approved October 18, 2004.

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**LEGISLATIVE HISTORY—S. 2319 (H.R. 4667):**

HOUSE REPORTS: No. 108-721, Pt. 1 (Comm. on Energy and Commerce) and Pt. 2 (Comm. on Resources) both accompanying H.R. 4667.

SENATE REPORTS: No. 108-299 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 15, considered and passed Senate.

Oct. 4, considered and passed House.