

**Testimony of J. Mark Robinson  
Director, Office of Energy Projects,  
Federal Energy Regulatory Commission  
Before the Subcommittee on National Parks  
Of the Committee on Energy and Natural Resources  
United States Senate**

April 27, 2003

Mr. Chairman and Members of the Committee:

My name is J. Mark Robinson and I am the Director of the Office of Energy Projects at the Federal Energy Regulatory Commission (Commission). I appreciate the opportunity to appear before you to discuss S. 2319, the Tapoco Project Licensing Act of 2004, which relates to a hydroelectric project regulated by the Commission. As a member of the Commission's staff, the views I express in this testimony are my own, and not those of the Commission.

**Background**

Pursuant to Part I of the Federal Power Act (FPA), the Commission is responsible for licensing and relicensing non-Federal hydropower projects, managing those projects during their license terms, and overseeing the safety of hydropower dams. Section 4(e) of the FPA authorizes the Commission to issue licenses for projects which, among other things, are located "upon" reservations of the United States.

The Federal Water Power Act of 1920 (FWPA), which in 1935 became Part I of the FPA, originally included national parks in the definition of "reservations."

In 1921, Congress amended the FWPA to remove national parks and monuments from the Commission's jurisdiction, and to retain in Congress the jurisdiction to authorize the construction of dams in parks. In 1935, when the FWPA was amended and became Part I of the FPA, Congress revised the definition of the term "reservation" to state that "reservations shall not include national monuments or national parks."

Establishment of the Great Smoky Mountain National Park was first provided for by a Congressional Act approved on May 22, 1926, with a provision specifying that the provisions of the FWPA did not apply to the park.

The 359.8-megawatt (MW) Tapoco Hydroelectric Project is located on the Little Tennessee and Cheoah Rivers in Graham and Swain Counties, North Carolina, and Blount and Monroe Counties, Tennessee. The project consists of the 49.2-MW Santeetlah Development, located on the Cheoah River, and the 118-MW Cheoah Development, the 140.4-MW Calderwood Development, and the 52.2-MW Chilhowee Development, all located on the Little Tennessee River. The project occupies 387 acres within the Nantahala National Forest, which is administered by the U.S. Forest Service. Notwithstanding the prohibitions discussed above on the Commission licensing projects within national parks, the reservoir of the Chilhowee project is located in part on one hundred acres of land within the Great Smoky Mountain National Park, which is administered by the National Park Service.

The Commission issued the original license for the Tapoco Project on March 17, 1955, for a period of 50 years, effective March 1, 1955, and expiring on February 28, 2005. The 1955 license authorized the construction and operation of the Chilhowee Development, and the continued operation of the Calderwood, Cheoah, and Santeetlah Developments. The license order did not state that a portion of the project would occupy national park land. Moreover, the license application, filed on October 25, 1954, states that “[n]o lands or reservations of the United States will be affected by the . . . [p]roject.” A search of the Commission’s files has produced no information that sheds further light on the matter.

As I have mentioned, the only portion of the Tapoco Project that is located on national park land is a part of the Chilhowee Reservoir. When the reservoir, which has a surface area of about 1,734 acres at normal full pond elevation of 874.0 feet msl, is at full elevation, it inundates approximately 100 acres of national park land.

Water in the reservoir is stored and released in order to provide head for generation at the project. In addition, the reservoir supports the second highest recreational use of the four developments, due to its proximity to Knoxville, and the availability of several boating access points and campgrounds. Also, Chilhowee’s upper end supports a cold- to cool-water fishery, while the lower portion of the reservoir supports a cool-water fishery. The Tennessee Wildlife Resources Agency actively manages the upper portion of the reservoir as a stocked put-and-take trout fishery and stocks catchable sized trout.

## **The Relicensing Proceedings**

On February 21, 2003, Tapoco Division of Alcoa Power Generating Inc. (Alcoa) filed an application for a new license for the project. On July 23, 2003, the Commission issued a public notice of the application. In response to the notice, several agreements in principle were filed with the Commission, setting forth the framework of a comprehensive settlement agreement among Alcoa, the U.S. Department of the Interior, the U.S. Department of Agriculture, the Eastern Band of Cherokee Indians, resource agencies of the States of North Carolina and Tennessee, local governments, and national, regional, and local non-governmental organizations, with respect to relicensing the Tapoco Project. The parties have indicated to Commission staff that they expect to file a settlement agreement with the Commission on or before May 14, 2004.

As part of the agreement in principle, Alcoa agrees to convey to the Park Service, in fee simple, approximately 200 acres of land located outside of the Tapoco Project boundary, and within the authorized boundary of the Great Smoky Mountain National Park. In return, the Park Service would transfer to Alcoa the approximate 100 acres of the Great Smoky Mountain National Park inundated by Chilhowee Reservoir. If these transfers were accomplished, no portion of the Tapoco Project would be located within a national park. However, it is my understanding that the Secretary of the Interior must obtain Congressional authorization in order to complete the transfers.

On March 15, 2004, Commission staff issued an environmental assessment (EA) for the relicensing of the Tapoco Hydroelectric Project.

The EA states that there is essentially no shoreline development on any of the Little Tennessee River mainstem reservoirs other than project-related facilities (project works and recreation facilities), and some small, public, non-project recreation areas. All of the shoreline surrounding the Chilhowee, Calderwood and Cheoah reservoirs is owned by Alcoa, the Tennessee Valley Authority, the Forest Service, the National Park Service, and the Tennessee Department of Transportation. Moreover, with the exception of a few parcels, most of the property adjoining the project boundary is also owned by these entities. The EA concluded that topography and existing property ownership virtually ensure that these reservoir shorelines will continue to be protected from future development. Further, nothing proposed by Alcoa is expected to change development patterns around the reservoir, or the current uses of the reservoir. Finally, as is often the case for projects in the southeastern U.S., the EA recommends that Alcoa be required to develop and implement a shoreline management plan, in order to protect important aquatic and terrestrial habitats and cultural sites, and to enhance recreation resources by establishing specifications and criteria to ensure that all private and multi-use recreation facilities are properly constructed and maintained.

On the other hand, the EA indicates that, were the reservoir lowered to an elevation where it would no longer inundate the Great Smoky Mountain National Park, virtually the entire 1,724 acre Chilhowee Reservoir would be eliminated,

resulting in the loss of the fishery, boating, and other recreation opportunities, as well as the annual loss of 52.2 MW of capacity, or enough to power about 52,000 homes.

The EA recommended that the Commission issue a new license for the Tapoco Project consistent with the agreements in principle. Comments on the EA are due by May 14, 2004.

### **The Proposed Legislation**

S. 2319 would authorize the Secretary of the Interior, consistent with the agreements in principle, to transfer to Alcoa the 100 acres of national park land that are occupied by the Chilhowee Reservoir, in exchange for some 186 acres of land located elsewhere in Great Smoky Mountain National Park, or for equivalent land. S. 2319 further states that, on completion of the land exchange, the Commission will have jurisdiction to license the Tapoco Project.

The land exchange provided for by S. 2319 will allow the Commission to consider Alcoa's proposal to relicense the project in its current form, as contemplated by the agreements in principle, without the need to address the issue of a portion of the project being located in a national park. If the legislation were to provide that the transfer be concluded by December 2004, it would help ensure the Commission's ability to act on Alcoa's proposal by the date the license expires on February 28, 2005.

Thank you. I will be pleased to answer any questions you may have.