

135 FERC ¶ 61,238  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Duke Energy Indiana, Inc.

Docket No. CP11-27-000

ORDER ISSUING CERTIFICATES

(Issued June 15, 2011)

1. On November 10, 2010, Duke Energy Indiana, Inc. (Duke) filed an application under section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing it to construct and operate a pipeline from Kentucky to Indiana (Gallagher Station Pipeline Project). Duke also requests authorization for a blanket construction certificate under Subpart F of Part 157 of the regulations.<sup>1</sup> In addition, Duke seeks waiver of the Commission's Part 284 open-access regulations and other general reporting requirements. For the reasons discussed below, the Commission will grant the requested certificate authorizations and waiver requests, subject to the conditions described herein.

**Background**

2. Duke is a public utility and corporation formed under the laws of Indiana. Duke, a wholly-owned, indirect subsidiary of Duke Energy Corporation, is engaged in the business of generating, transmitting, and distributing electric power in Indiana. As part of its business, Duke operates four electric power generating units at its R. Gallagher Generating Station (Gallagher Station) in Floyd County, Indiana. Upon receipt of the requested authorizations, Duke will become a natural gas company within the meaning of NGA section 2(6) and will be subject to the Commission's jurisdiction.

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<sup>1</sup> 18 C.F.R. Part 157, Subpart F (2010).

**Proposal**

3. Duke proposes to construct and operate: (1) approximately 19.45 miles of 20-inch diameter pipeline extending from an interconnection with Texas Gas Transmission, LLC's mainline facilities near the City of Kosmosdale in Jefferson County, Kentucky, across the Ohio River to Duke's Gallagher Station in Floyd County, Indiana; (2) a metering station in Jefferson County, Kentucky; (3) a regulation station at the Gallagher Station with a pig launcher, tie-in, transfer meter, pig trap, and isolation and blow-down valves; and (4) two mainline block valves, one each in Floyd and Harrison Counties, Indiana. The proposed facilities are designed to provide a peak flow of 5.6 million cubic feet (MMcf) per hour and an off-peak flow of 4.4 MMcf per hour of firm transportation service. Duke estimates the cost of its proposed project will be approximately \$40,658,831.

4. Duke proposes to use the pipeline for the sole purpose of delivering natural gas owned by Duke to its Gallagher Station. Specifically, Duke states that it needs the proposed pipeline to supply natural gas to two electric power generating units at the Gallagher Station that it is converting from coal-fired to natural gas-fired boilers. Duke contends that it is converting the units to comply with a federal court consent decree that it entered into with a number of plaintiffs, including the Environmental Protection Agency, to settle claims concerning alleged violations of the Clean Air Act.<sup>2</sup> Duke asserts that it will be unable to convert the two units at its Gallagher Station without access to the natural gas provided by the proposed pipeline. Duke notes that the Gallagher Station is in an area that does not have access to gas delivery facilities with sufficient capacity and pressure to meet the demands of the converted electric generation units.

5. Duke also requests authorization for a blanket certificate under Part 157, Subpart F of the regulations to perform routine activities in connection with the construction, abandonment, replacement, and operation of its proposed facilities.

6. In addition, because Duke proposes to use the proposed pipeline on a proprietary basis, Duke seeks waiver of the Commission's Part 284 open-access regulations and other general reporting requirements.

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<sup>2</sup> The consent decree provides, among other things, that Duke must convert units 1 and 3 at the Gallagher Station from coal-fired to gas-fired boilers by December 31, 2012, or retire the units within 30 days after making a final decision to do so, notice of which must be provided no later than January 1, 2012. Duke also states that it filed a petition with the Indiana Utility Regulatory Commission to obtain a certificate for authority to convert Gallagher Station units 1 and 3 from coal-fired to natural gas-fired boilers.

## **Interventions**

7. Notice of the applications was published in the *Federal Register* on December 1, 2010 (75 Fed. Reg. 74,698). Vectren Energy Delivery of Indiana, Inc. and Harold E. Colvin filed timely, unopposed motions to intervene. Timely unopposed motions to intervene are granted by operation of Rule 214.

## **Discussion**

8. Since the proposed facilities will be used for the transportation of natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

### **A. Application of the Certificate Policy Statement**

9. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating major new construction.<sup>3</sup> The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

10. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse

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<sup>3</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000); *order further clarifying*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

11. As noted, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Since Duke is not currently a natural gas company, it has no existing transportation customers. Accordingly, the no-subsidy requirement is satisfied.

12. Duke's proposed facilities will not have an adverse effect on existing pipelines and their captive customers, since Duke does not currently receive gas service for its Gallagher Station from any other entity. Further, no other pipeline company protested the application.

13. With respect to the effect of this project on landowners and communities in proximity to the route, we find that Duke has made efforts to minimize impacts on landowners and nearby communities. Specifically, the project follows existing electric transmission lines and route right-of-ways for approximately 9.85 miles of the proposed route. In addition, Duke has been in contact with affected landowners for the purpose of gaining access to their land for necessary surveys and to keep the landowners informed about the project and the potential impact on their land. Further, no nearby landowners or communities filed a protest to the project.

14. Although the Commission generally requires new pipelines to operate on an open-access basis, we have issued certificates of public convenience and necessity for interstate pipelines proposed to serve a single user.<sup>4</sup> Duke's proposal will enable Duke to convert two of the four generating units at the Gallagher Station from coal-fired to natural gas-fired boilers in order to settle claims concerning alleged violations of the Clean Air Act. Based on the potential benefits of the project, and the lack of any identifiable adverse impacts on existing customers, other pipelines, landowners, and communities, we find, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that approval of the Gallagher Station Pipeline Project is required by the public convenience and necessity, subject to the conditions discussed below. However, as in similar cases, our authorization for Duke to operate the proposed facilities on a non-open-access basis

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<sup>4</sup> See *Transcontinental Gas Pipe Line Corp.* 91 FERC ¶ 61,180 (2000) (authorizing South Carolina Public Service Authority to construct and operate a pipeline to transport gas from an interconnection with Transcontinental Gas Line to its planned gas-fired electric generation station); and *USG Pipeline Co.*, 81 FERC ¶ 61,039 (1997), *order denying reh'g and reconsideration*, 82 FERC ¶ 61,117 (1998).

is subject to change should Duke receive a *bona fide* request for firm open-access transportation service.<sup>5</sup> In addition, because Duke will become an interstate pipeline upon the issuance of a certificate to construct and operate the proposed facilities, we will also issue Duke a Part 157, Subpart F blanket certificate.

## **B. Rates and Accounting**

15. As proposed and authorized, Duke will not be providing transportation service for others. Therefore, no rates are required.<sup>6</sup> Duke seeks waivers of various Commission regulations related to open-access service under Part 284, as well as other general reporting requirements. Specifically, Duke seeks waivers of: (1) the requirement under section 157.6(b)(8) to provide information to support a determination of an initial rate for service on the proposed pipeline; and (2) the requirements under sections 157.14(a)(11), (16), (17), and (18) to provide Exhibits I (Market Data), N (Revenues-Expenses-Income), O (Depreciation and Depletion), and P (Tariff). Duke also seeks waivers of the Commission's reporting and accounting regulations under: (1) Part 201, Uniform System of Accounts; (2) Part 250, Approved Forms; and (3) section 260.2, Form No. 2-A, Annual Report.

16. We have previously granted waivers of certain reporting and accounting requirements for limited-purpose pipelines.<sup>7</sup> Since the circumstances here are similar, we will grant the requested waivers and not require Duke to establish initial NGA section 7 rates or file a Part 284 tariff to comply with our open-access policies and regulations, provided Duke receives no requests for third-party service on its facility. However, if Duke receives a *bona fide* request for firm service from another party, these waivers will be re-examined. Therefore, we will condition the certificate issued herein to require Duke to apply for an open-access blanket transportation certificate within 30 days of Duke's receipt of any *bona fide* request to provide firm transportation service on its pipeline. In the event of a request for firm transportation service, we will require Duke to comply with our Part 284 reporting obligations and business practices. Thus, Duke shall

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<sup>5</sup> See *Freeport-McMoRan Energy LLC*, 115 FERC ¶ 61,201, at P 24-26 (2006); *Transcontinental Gas Pipeline Corp.* 91 FERC ¶ 61,180 (2000); *USG Pipeline Co.*, 81 FERC ¶ 61,039 (1997), *order denying reh'g and reconsideration*, 82 FERC ¶ 61,117 (1998).

<sup>6</sup> See *Crown Zellerbach Corp.*, 35 FERC ¶ 61,292, at 61,672 (1986).

<sup>7</sup> See *Freeport-McMoRan Energy LLC*, 115 FERC ¶ 61,201, at P 24-26 (2006); *Transcontinental Gas Pipeline Corp.* 91 FERC ¶ 61,180 (2000); *USG Pipeline Co.*, 81 FERC ¶ 61,039 (1997), *order denying reh'g and reconsideration*, 82 FERC ¶ 61,117 (1998).

maintain records to separately identify the original cost and related future depreciation on the facilities, since open-access transportation calls for cost-of-service accounting.

**C. Environmental Analysis**

17. We approved Duke's request to use the pre-filing review process for the proposed project on March 9, 2010, in Docket No. PF10-8. As part of our Pre-filing review, on May 12, 2010, staff issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

18. We received comments in response to the NOI from the United States Army Corps of Engineers (USACE), the Indiana Department of Natural Resources (IDNR) – Nature Preserves Division, the Kentucky Department of Fish and Wildlife Resources (KDFWR), the Peoria Tribe of Indians, and Harold E. Colvin, an affected landowner. The primary issues raised by the resource agencies concerned potential project impacts on federally and state listed species, wetland and waterbody resources, and cultural resources. The primary issues raised by the landowner were zoning issues and long-term property development plans.

19. To satisfy the requirements of the National Environmental Policy Act of 1969, our staff prepared an environmental assessment (EA) for Duke's proposed project. The EA was prepared in cooperation with the USACE. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. The substantive environmental comments received in response to the NOI are addressed in the applicable sections of the EA.

20. The IDNR – Nature Preserves Division filed general scoping comments regarding federally and state listed endangered and threatened species within the area affected by the proposed project in Indiana. The EA discusses the erosion control and restoration measures included in Duke's Erosion and Sedimentation Control Plan (ESCP) and concluded that this plan would minimize any potential impacts to state listed species by limiting the scope and duration of impacts on wildlife habitat. As discussed in the EA, the United States Fish and Wildlife Service (USFWS) – Indiana Office specifically stated it concurs with our staff's finding that the project is not likely to adversely affect the federally endangered Indiana bat, gray bat, or Short's goldenrod pursuant to section 7 of the Endangered Species Act, if Duke observes a seasonal tree removal restriction for Indiana bats (no tree removal from April 1 through September 30) and avoids extensive alterations to stream corridors. The USFWS – Indiana Office based its concurrence on Duke's commitment to follow those two conditions in Indiana.

21. The KDFWR filed general scoping comments regarding federally and state listed endangered species which are known to occur near the proposed project site in Kentucky, commenting that the proposed project should be designed to eliminate and/or reduce impacts on wetland habitats and recommending that tree clearing should only take place between October 1 and March 31 to avoid impacts to the Indiana bat. The EA discusses the fact that Duke would avoid adverse impacts on the Indiana bat by using the horizontal drill method to install the pipeline beneath the Ohio River and along a portion of the adjacent flood plain. This would minimize wetland and woodlot impacts (tree removal) and avoid potential Indiana bat roosting or foraging habitat impacts for the Kentucky portion of the project. In fact, no mature tree removal is expected in Kentucky. With the concurrence of the USFWS – Kentucky Office, we have determined that the project is not likely to adversely affect any federally threatened or endangered species in Kentucky.

22. The Peoria Tribe of Indians filed a letter which expressed no specific concerns, but asked to be notified if any artifacts or human remains covered by the Native American Graves Protection and Repatriation Act were discovered during pipeline construction.

23. Mr. Colvin expressed a concern about the pipeline's impact on the long-term development plans of his property. As a result, Mr. Colvin proposed three route variations – a reroute of the pipeline within the State Route 111 right-of-way (Variation 13); a reroute of the pipeline on the edge of his property near the bank of the Ohio River (Variation 14); and a reroute of the pipeline that would involve demolishing his residence and placing the pipeline under the footprint of his torn-down house (Variation 15). The EA found that Variation 13 was not viable since Duke could be forced to shut down the pipeline if the Indiana Department of Transportation needed to close the road to make repairs. The EA also found that Variation 14 was not viable because it would put the pipeline at a high risk for potential erosion if the river flooded, as well as potentially cause risks to a forested wetland. The EA found that Variation 15 was not economically or environmentally advantageous because Duke's suggested route would have fewer impacts on safety, reliability, and the environment, as well as on human habitation. Duke also suggested a variation, but Mr. Colvin rejected this option. Thus, the EA did not recommend this variation.

24. On April 6, 2011, the EA was issued for a 30-day comment period and placed into the public record. On May 23, 2011, the Indiana State Historic Preservation Officer filed comments concurring with the archeological recommendations and findings.

25. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Duke's application and supplements, and in compliance with the environmental conditions in the appendix to this Order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

26. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>8</sup>

27. The Commission, on its own motion, received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Duke authorizing it to construct and operate the Gallagher Station Pipeline Project, as described and conditioned herein, and as more fully described in the application.

(B) A blanket construction certificate is issued to Duke under Subpart F of Part 157 of the Commission's regulations.

(C) The certificate issued in Ordering Paragraph (A) is conditioned on:

- (1) Duke's completing the authorized construction within two years of the date of this order;
- (2) Duke's compliance with paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) Duke's compliance with the environmental conditions listed in the appendix to this order.

(D) Duke shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Duke. Duke shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours

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<sup>8</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(E) Duke shall apply for Part 284 open access blanket transportation certificate within 30 days of receiving a *bona fide* request to provide firm transportation on Duke's pipeline facilities.

(F) Duke is granted waivers of the applicable portions of Parts 157, 201, 250, and 260 of the Commission's regulations; however, Duke is required to maintain records to separately identify the original cost and related future depreciation on its gas pipeline facilities.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## APPENDIX

As recommended in the EA, this authorization includes the following condition(s):

1. Duke shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Duke must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction, operation, and activities associated with abandonment of the project. This authority shall allow:
  - a. the modification of conditions of the Order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction, operation, and activities associated with abandonment.
3. **Prior to any construction**, Duke shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Duke shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Duke's exercise of eminent domain authority granted under NGA Section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Duke's right of eminent domain granted under NGA Section 7(h) does not authorize it to increase the size of its natural gas pipelines or aboveground facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Duke shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by Duke's ESCP, and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the Certificate and before construction begins**, Duke shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Duke must file revisions to the plan as schedules change. The plan shall identify:
    - a. how Duke will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;

- b. how Duke will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions Duke will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
  - f. the company personnel and specific portion of Duke's organization having responsibility for compliance; and
  - g. the procedures (including use of contract penalties) Duke will follow if noncompliance occurs.
7. Beginning with the filing of its Implementation Plan, Duke shall file updated status reports with the Secretary on a biweekly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Duke's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;

- f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by Duke from other federal, state, or local permitting agencies concerning instances of noncompliance, and Duke's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Duke shall file with the Secretary documentation that it has received all authorizations required under federal law (or evidence of waiver thereof).
9. Duke must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the authorized facilities in service**, Duke shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed and installed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the certificate conditions Duke has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. Duke **should not begin construction** of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
- a. Duke files with the Secretary:
    - (1) better justifications for recommendations of deep testing at archaeological sites whose surface deposits appear to be not eligible for the National Register of Historic Places (NRHP) as listed in Appendix G;
    - (2) reports of results of testing or NRHP-evaluative investigations and any additional cultural resources surveys;
    - (3) site-specific avoidance and/or treatment plan(s), as required; and

- (4) comments on the cultural resources reports and plans from the appropriate State Historic Preservation Office; and
- b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
- c. staff reviews, and the Director of OEP approves, the cultural resources reports and plans, and notifies Duke in writing that avoidance and/or treatment measures (including archaeological data recovery) may be implemented and/or construction may proceed.

All materials filed with the Commission containing **location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in **bold** lettering: “**CONTAINS PRIVILEGED INFORMATION - DO NOT RELEASE.**”