

MEMORANDUM OF UNDERSTANDING

Between the

FEDERAL ENERGY REGULATORY COMMISSION

Mountain Valley Pipeline, LLC. and

Cardno, Inc.

a. Background.

The Energy Policy of 1992¹ and related regulations provide for the use of third-party contracts to assist agencies in satisfying the requirements of the National Environmental Policy Act (NEPA).² In its "Forty Questions" issued in the Federal Register on 23 March 1981, the Council on Environmental Quality indicated the term "third-party contract" referred to contractors paid by the applicant but selected by the agency. 40 CFR 1506.5(c) further stipulates that the contractor must execute a disclosure statement prepared by the agency to avoid any conflict of interest. If the NEPA document is prepared with third-party contract assistance, the responsible agency must participate in the preparation and shall independently evaluate the NEPA document prior to its approval. The agency must also take full responsibility for the scope and contents of the NEPA document.

On May 15, 2018, the Federal Energy Regulatory Commission (FERC) staff approved Mountain Valley Pipeline, LLC's (Mountain Valley) request to use the pre-filing review process for the planned MVP Southgate Project in Docket No. PF18-4-000, and requested that Mountain Valley proceed with preparing a Memorandum of Understanding (MOU) between the FERC, Mountain Valley, and Cardno, Inc (Cardno).

This MOU defines the roles and obligations of the FERC, Mountain Valley as the private entity with a planned or pending application before the FERC (referred to as Applicant), and Cardno as the independent contractor chosen by FERC staff (referred to as Contractor).

¹ 16 U.S.C. 797d.

² 42 U.S.C. 4321-4370h (2012).

The contract between the Applicant and the Contractor will be executed pursuant to the third-party contracting procedures set forth in 40 CFR 1506.5(c) and as described in the FERC Handbook for using Third-Party Contractors to Prepare Environmental Documents (August 2016).

The FERC staff of the Office of Energy Projects (OEP) will direct the activities of the contractor in the consultation, reviews, preparation, and processing of the documents within the scope of the contract. **The Applicant will not control or direct the activities of the Contractor, except with respect to the processing of invoices.**

b. Obligations of the Applicant

The Applicant agrees to perform the following tasks:

- I. Certify that the selected Contractor, to the best of its knowledge, has no financial or other interest in the outcome of the project. Specifically, the contract or project provides no unfair competitive advantage to the Contractor.
- II. The Applicant and the Contractor have no relationships that could impair the Contractor's objectivity in performing the contract work.
- III. Affirm that all communications with the Contractor will be restricted to financial components of its contract. Communications on the merits of the Applicant's project may only be conducted jointly with OEP staff, subject to any disclosure and ex parte requirements.
- IV. Be solely responsible for all Contractor and subcontractor fees, costs, and expenses.
- V. Retain no rights to the products of the contract.
- VI. Include the Applicant and Contractor roles and obligations outlined in this MOU as mandatory provisions in the contract between Applicant and Contractor.

c. Obligations of the Contractor (and all subcontractors, as appropriate)

- I. The Contractor certifies that it has no conflict of interest in performing the work required under the contract and certifies that it has no financial or other interest in the outcome of the Commission's review.
- II. The Contractor certifies that its Organizational Conflict of Interest (OCI) Statement provided to FERC for review prior to selection is accurate.
- III. The Contractor has a continuing obligation to identify conflicts of interest that may arise because of changes in corporate identity, affiliation, structure, or ownership, or changes to the contract throughout the actual performance period of the work. Therefore, the OCI Statement must be refreshed on an annual basis, at a minimum, and more frequently if the Contractor's business relationships have changed in a manner that affects the previously submitted OCI Statement.
- IV. In the event an OCI is discovered after award, the Contractor certifies that it will immediately notify the OEP Environmental Project Manager and will submit a plan to mitigate the conflict. The mitigation plan will be submitted to FERC's Office of General Counsel – General and Administrative Law for review and written determination as to whether the plan can be implemented within 30 days of the identification of an OCI.
- V. The Contractor agrees to only communicate with the Applicant on financial issues related to the executed contract, unless OEP staff is present and subject to any disclosure and ex parte requirements.
- VI. All work performed by the Contractor will be under the direction of and meet any timeframes established by OEP Staff. General duties of the contractor are listed in Chapter 2.4 of the Handbook for Using Third-Party Contractors to Prepare Environmental Documents. These duties are also listed within the sample Request for Proposals included in Chapter 3 of the Handbook.
- VII. The Contractor shall not replace its Project Manager, assistant Project Manager, or other key employee or subcontractor personnel without the prior consultation of the OEP staff.

d. Obligations of OEP

- I. OEP will select the Contractor, based on its independent review of the technical, managerial, personnel, and OCI aspects of each proposal.
- II. OEP will set the schedule for completion of the NEPA document and all associated documents.
- III. OEP will be responsible for providing technical direction to the Contractor throughout the NEPA review process.
- IV. OEP will identify all information necessary to complete its review and will decide on the inclusion or deletion of all material in the NEPA document.
- V. OEP staff has the right, at any time and in their sole discretion, to have any personnel of the Contractor, or the Contractor's subcontractor, either temporarily or permanently dismissed from the project.

e. Expiration

This MOU shall become effective upon signature of all three parties and shall expire following completion of the contracted scope of work as agreed to by the parties to the agreement.

f. Termination

This MOU may be terminated prior to expiration with the written consent of all three parties. Each party may initiate termination upon thirty (30) days written notice to the other parties. During the intervening 30 days, the parties agree to actively attempt to resolve any outstanding disputes or disagreements.

g. Effective Date

This MOU and any attachments hereto shall become effective upon signature of all three parties.

SIGNATURES OF AGREEMENT

Federal Energy Regulatory Commission



Signature

Terry L. Turpin

Typed Name

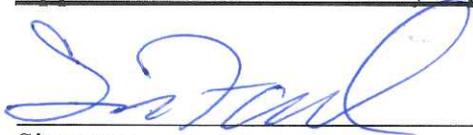
Director, Office of Energy Projects

Typed Title

June 5, 2018

Date

Applicant – Mountain Valley Pipeline, LLC



Signature

Travis D. Faul

Typed Name

Environmental Services Manager, NextEra Energy

Typed Title

June 14, 2018

Date

Contractor – Cardno, Inc.



Signature

Allen Jacks
Typed Name

Senior Project Scientist/Project Manager
Typed Title

June 8, 2018

Date