

## MEMORANDUM OF UNDERSTANDING

Between the

**FEDERAL ENERGY REGULATORY COMMISSION;  
MOUNTAIN VALLEY PIPELINE, LLC; AND CARDNO, INC.**

### **a. Background**

The Energy Policy Act of 1992<sup>1</sup> 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).<sup>2</sup> 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.

On October 13, 2017, the Federal Energy Regulatory Commission (FERC) issued a Certificate of Public Convenience and Necessity (Certificate) in Docket No. CP16-10-000 authorizing Mountain Valley Pipeline, LLC (Mountain Valley) to construct and operate its Mountain Valley Project (MVP) in West Virginia and Virginia. The Certificate is conditioned on compliance with environmental requirements and mitigating measures developed during the NEPA review. Mountain Valley has elected to extend its contract with Cardno, Inc. (Cardno) as a third-party contractor to work under the direction of the FERC staff and assist in FERC's Certificate compliance responsibilities to conduct environmental inspections and compliance tasks for the upcoming construction activities related to the MVP. The FERC staff requested that this Memorandum of Understanding (MOU) between the FERC, Mountain Valley, and Cardno be prepared to guide the construction compliance program.

This MOU defines the roles and obligations of the FERC as the federal agency responsible for compliance with NEPA; Mountain Valley as the private entity with activities authorized by the FERC (referred to as Applicant); and Cardno as the independent contractor chosen by FERC staff (referred to as Contractor). 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

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<sup>1</sup> 16 U.S.C. 797d.

<sup>2</sup> 42 U.S.C. §§ 4321-4370h (2012).

Contractor in the consultation, review, preparation, and processing of the monitoring and compliance activities 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. Be solely responsible for all Contractor and subcontractor fees, costs, and expenses.
- IV. Retain no rights to the products of the contract.
- V. 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 FERC 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 thirty days of the identification of an OCI.
- V. All work performed by the Contractor will be under the direction of and meet any timeframes established by OEP Staff.
- VI. The Contractor shall not replace its Compliance Manager, Compliance Monitors,

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 monitoring and compliance activities and all associated documents.
- III. OEP will be responsible for providing technical direction to the Contractor throughout the compliance 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 monitoring and compliance documentation.
- 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 days written notice to the other parties. During the intervening thirty 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**

Terry L. Turpin  
Signature

Terry L. Turpin  
Typed Name

Director, Office of Energy Projects  
Typed Title

January 12, 2018  
Date

**Applicant – Mountain Valley Pipeline, LLC**

(by and through its operator, EQM Gathering Opco, LLC)

DS  
MTE

Robert Cooper  
Signature

Robert Cooper  
Typed Name

Senior Vice President  
Typed Title

January 12, 2018  
Date

**Contractor – Cardno, Inc.**



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Signature

Wayne Kicklighter

\_\_\_\_\_  
Typed Name

Technical Director

\_\_\_\_\_  
Typed Title

January 12, 2018

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Date