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November 15, 2021

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, D.C. 20426

Re: WBI Energy Transmission, Inc.
Wahpeton Expansion Project
Docket No. PF21-4-000
Memorandum of Understanding

Dear Ms. Bose:

WBI Energy Transmission, Inc. (WBI Energy), hereby submits an executed Memorandum of Understanding (MOU) between the Federal Energy Regulatory Commission (Commission), WBI Energy, and Cardno, Inc. to assist Commission staff in preparing a National Environmental Policy Act document for the Wahpeton Expansion Project.

Pursuant to 18 CFR § 385.2010 of the Commission's regulations, copies of this filing are being served to each person whose name appears on the official service list for this proceeding.

Should you have any questions or comments regarding this filing, please call the undersigned at (701) 530-1563.

Sincerely,

/s/ Lori Myerchin

Lori Myerchin
Director, Regulatory Affairs and
Transportation Services

Enclosure

Courtesy Copies:

David Hanobic, FERC Environmental Project Manager
Official Service List

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 15th day of November 2021.

By /s/ Lori Myerchin
Lori Myerchin
Director, Regulatory Affairs and
Transportation Services
WBI Energy Transmission, Inc.
1250 West Century Avenue
Bismarck, ND 58503
Telephone: (701) 530-1563

MEMORANDUM OF UNDERSTANDING
Between the
Federal Energy Regulatory Commission,
WBI Energy Transmission, Inc., and Cardno, Inc.

a. Background.

The Energy Policy Act 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(b)(4) 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 September 27, 2021, the Federal Energy Regulatory Commission (FERC) staff approved WBI Energy Transmission, Inc. (WBI Energy)’s request to use the pre-filing review process for the planned Wahpeton Expansion Project in Docket No. PF21-4-000, and acknowledged WBI Energy’s intent to fund a third-party contractor and that FERC would select a third-party contractor once all the information had been filed. On November 9, 2021, the FERC staff selected Cardno, Inc. (Cardno).

This Memorandum of Understanding (MOU) defines the roles and obligations of the FERC as the federal agency responsible for the NEPA review; WBI Energy 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). 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(b)(4) and as described in the FERC *Handbook for using Third-Party Contractors to Prepare Environmental Documents* (August 2016).

¹ 16 U.S.C. 797d.

² 42 U.S.C. §§ 4321-4370h (2012).

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

- I. The Applicant certifies 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 certifies that the Applicant and the Contractor have no relationships that could impair the Contractor's objectivity in performing the contract work.
- III. All communications with the Contractor will be restricted to the 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. The Applicant will be solely responsible for all Contractor and subcontractor fees, costs, and expenses.
- V. The Applicant will retain no rights to the products of the contract.
- VI. The Applicant and Contractor roles and obligations outlined in this MOU will be included 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 **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

for Terry Turpin

Typed Name

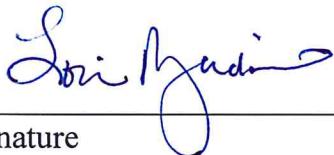
Director, Office of Energy Projects

Typed Title

November 9, 2021

Date

Applicant – WBI Energy Transmission, LLC



Signature

Lori Myerchin

Typed Name

Director, Regulatory Affairs and Transportation Services

Typed Title

November 15, 2021

Date

Contractor – Cardno, Inc.

Douglas Mooneyhan

Signature

Douglas M. Mooneyhan

Typed Name

Practice Group Manager

Typed Title

November 11, 2021

Date