

NIKO RESOURCES (BANGLADESH) LTD.
V.
BANGLADESH PETROLEUM EXPLORATION & PRODUCTION COMPANY LIMITED
(“BAPEX”)
AND BANGLADESH OIL & GAS MINERAL CORPORATION (“PETROBANGLA”)
(ICISD CASE NOS. ARB/10/11 AND ARB/10/18)

Procedural Order No 26
(Document Production)

At the November 2020 Hearing, the Respondents presented a proposed Procedural Schedule for Quantification of Recoverable Claims for the proceedings following the forthcoming Decision on Heads of Recoverable Loss. This schedule provided as a first phase requests for production of documents by BAPEX, response by Niko to these requests and decision by the Tribunals. The Claimant objected that such a phase for document production had not been provided in the agreed programme and was inadmissible.

In order to avoid that such a document production phase delay the proceedings on quantification, the Tribunals proposed that the requests and responses to them could be exchanged during the period following the November Hearing 2020 and that any unresolved issues on document production could then be decided by the Tribunal together with the Decision on Heads of Recoverable Loss. The Parties agreed that two weeks were sufficient for the request and for the response.

Having considered the matter further the Tribunals now issue the following

ORDER

1. Each party may file by Wednesday 9 December 2020 a request for the production of documents which are not in its possession or available to it but are in the possession of the opposing party. The requesting party shall identify each requested document with specificity, identify the head of loss to which the document relates and justify the relevance and materiality of the document for the quantification of that loss.
2. The requested party shall by Wednesday 23 December 2020 respond to the document production request, either identifying a date by which the requested document will be produced or setting out its objections to the requested production, including any objections to the admissibility of such request for document production at this stage of the procedure.

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3. A party that is not satisfied with the response of the requested party may submit, no later than 12 January 2021, its document production request to the Tribunals for decision.
4. Unless the Tribunals determine that a request can be decided in advance of their Decision on Heads of Recoverable Loss, they will rule on the requests for document production with that decision.
5. The parties are free to use any format they find suitable for the request and response, including the format of a Redfern schedule.

On behalf of the two Arbitral Tribunals

[signed]

Michael E. Schneider
President
1 December 2020