

NIKO RESOURCES (BANGLADESH) LTD.**V.****BANGLADESH PETROLEUM EXPLORATION & PRODUCTION COMPANY
LIMITED (“BAPEX”) AND
BANGLADESH OIL & GAS MINERAL CORPORATION (“PETROBANGLA”)
(ICSID CASE NO. ARB/10/11)****Procedural Order No 30
(Directions for the November 2021 Hearing)**

Further to the Parties’ communications of 14 October 2021, the Tribunal provides, in preparation of the Pre-Hearing Conference on 21 October 2021 (the PHC), the following considerations for the discussion at this PHC; dates marked by **xx** are reserved for discussion at the PHC:

1. General organisation of the Hearing:

In view of the prior decisions and the Parties’ procedural agreements, the Hearing will be limited to the quantification of the gas lost as the result of the First Blowout.

With respect to all other issues concerning the Compensation Declaration, with the exception of the arbitration costs, the Parties have presented their argument and evidence in writing and no further argument and evidence is foreseen. The Tribunal reserves, however, the possibility of addressing such other issues at the Hearing.

The Tribunal reminds the Parties that all three arbitrators will have studied the Parties’ written submissions prior to the Hearing. Therefore, the Members of the Tribunal do not require any oral repetition by the Parties of their written submissions and expect merely short and concise opening statements, focusing on the issues that are subject of the Hearing.

2. Considering the Parties’ submissions on the quantification of the lost gas, it appears to the Tribunal that there are a number of discrete issues that must be addressed, these include:

- (i) The methodology for quantifying the lost gas;
- (ii) The volume of the gas lost during the first period up to the Chattak 2A blowout on 24 June 2005;
- (iii) The Chattak 2A blowout and its effect on the gas flow;
- (iv) The volume of gas lost during the second period from the Chattak 2A blowout until the completion of the Chattak 2B relief operation;
- (v) The question whether the Chattak 2B relief operation effectively sealed the Chattak 2 wellbore;
- (vi) The volume of gas lost, if any, following the completion of the Chattak 2B relief operation.

The Tribunal will consider with the Parties at the PHC whether this list is complete and whether it correctly defines, in their opinion, the issues to be addressed at the November 2021 Hearing.

3. The Tribunal’s understanding of these issues may be substantially facilitated, if each of them would be discussed separately, the Parties presenting a short opening to the issue and the experts

updating their presentations in light of the latest argument and expert opinions. Relevant testimony will also be heard on each of these issues (see below item 6).

4. Methods for estimating the quantities of lost gas. The Claimant quantifies the loss specifically by reference to each of the three periods. It objects against the method on which BAPEX relies, arguing that this method fails to address specifically the periods before and after the blowout at Chattak 2A, and after the completion of the Chattak 2B relief operation. The Tribunal will have to determine whether that method, described by the Claimant as “simplistic mathematical average daily gas flow rate (up to 4 September 2005) and the extrapolation of that flow rate to future periods”,¹ may be applied or whether the loss in each of the three periods must be assessed separately. If the Parties and their experts wish to respond to the method of their opponent by presenting the results which, in their opinion, that method produces, they should do so in writing before the November 2021 Hearing. The Parties are invited to consult about any further submissions on this issue before the November 2021 Hearing.
5. If the proposed approach of a distinct treatment of the identified issues is acceptable to the Parties, the Tribunal envisions that there will be only short general opening statements, dealing succinctly with issues concerning other points which will not be addressed in the presentations on the specific issues.
6. Given the nature of the issues identified above and the extensive written explanations by witnesses and experts provided already, the Tribunal is of the view that all witnesses and experts relevant for a specific issue should be connected to the virtual hearing room and available for questioning. The Parties are invited to identify the relevant witnesses and experts for each issue by xx October 2021. In so doing, the Parties shall specify the aspects on which each expert and witness will provide evidence and opinion. The Tribunal will then determine by xx November 2021 which witnesses and experts will be heard on each issue, whether or not they have been called for cross-examination.
7. The allocation of time between the Parties shall be discussed at the PHC in light of the overall Hearing organisation adopted.
8. The Parties are invited to provide prior to the Hearing (i) a list of the relevant submissions and supporting evidence for each issue and (ii) an updated hyperlinked index, allowing easy access during the Hearing. The Parties are invited to liaise with the Secretariat about the modalities for transmitting the indices to each Member of the Tribunal.
9. Demonstrative exhibits must be submitted to the Tribunal and the other Party (xx) days before their intended use.
10. The Tribunal would find it useful to have written closing submissions, summarising the Parties’ respective cases, as emerged by the end of the Hearing. The Tribunal will discuss with the Parties at the end of the Hearing the timeline for written closing submissions and for the Parties’ submissions on costs.

¹ Niko’s Reply on Quantum for Lost Gas, paragraph 28.

11. A draft Hearing Protocol, similar to the one circulated for the November 2020 Hearing, will be provided to the Parties in due course.

On behalf of the Arbitral Tribunal

[signed]

Michael E. Schneider

President

19 October 2021