

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 31
 (“unaddressed matters”)**

This Procedural Order addresses various matters that have arisen prior to the November 2021 Hearing.

The Respondents’ Requests for a further response

1. The Tribunal considered the Respondents’ requests, as recorded in their comments on the draft Summary Minutes of the 21 October 2021 Pre-Hearing Conference (PHC),
 - (a) “to respond fully in writing to the Claimant’s Counter-Memorial, including the six witness and expert statements attached”; and
 - (b) “to allocate additional time at the Hearing for an oral presentation” and “that they be given the fullest possible opportunity at the Hearing to respond with counsel argument and expert testimony to unaddressed matters in the Counter Memorial.”
2. The Tribunal noted that the Respondents have presented their positions on the blowout damages in three written submissions accompanied by expert reports, submissions that were progressively narrowed as the Tribunal decided certain aspects concerning the Compensation Claim with the intention to assist the Parties in focusing their submissions. The previously agreed procedure for the remainder of the proceedings on the Compensation Claim did not provide for any further written submissions (see paragraphs 3 and 4 of Procedural Order No 27); only remaining issues on the quantities of lost gas were to be addressed orally at the November 2021 Hearing. In an additional submission invited by the Tribunal subsequently, the Respondents were given the opportunity to make a fourth submission on an important issue on quantification and did so by the Ryder Scott expert report of 29 October 2021.
3. The Tribunal also took note of the agreement which the Parties reached following the 21 October 2021 PHC concerning the agenda for the November 2021 Hearing, including the allocation of time. It accepted this allocation and concluded from the fact

that it was agreed by both Parties that the agreed allocation satisfies the Respondents' concern also in respect to the time required for any "unaddressed matters".

4. If the Respondents see any "unaddressed matters" in the Claimant's Counter-Memorial which can only be addressed by a further written submission, they are invited to specify these by Friday 5 November 2021.

The wellbore drawings

5. Both Mr Hughes, one of the Respondents' experts, in his report dated 20 August 2021, and Mr Wright, one of the Claimant's experts, in his report dated 30 September 2021, included drawings representing the Chattak wellbores in their successive states. The drawing followed a similar format but differed in a number of aspects with respect to the information they represented.
6. The Tribunal is of the view that such representations of the wellbores are of assistance in understanding the explanations of the Parties and their experts. Therefore, it asked the Parties during the PHC to try to agree on a joint set of drawings (see Summary Minutes of the 21 October 2021 PHC, paragraph 15c). In the absence of an agreement, the Tribunal authorised each party to submit its own set of representations.
7. Subsequently, the Parties failed to agree on such a joint set and the Claimant produced on 1 November 2021 the set from Mr Wright's report, announcing that it would refer to the drawings at the Hearing as Demonstratives.
8. The Tribunal then invited the Respondents on 1 November 2021, to identify, by Thursday 4 November 2021, on or by reference to each drawing those aspects on which it disagrees.
9. Shortly thereafter, on 1 November 2021, the Respondents produced their own set of drawings, as the Tribunal had authorised at the PHC (1 November 2021 Drawings). This set of drawings, however, was not that from Mr Hughes' August 2021 report, previously produced by the Respondents. Instead, on 1 November 2021, the Respondents produced a new set of drawings, different from both the Hughes and the Wright drawings. The Respondents, however, did not explain in the communication accompanying the 1 November 2021 Drawings, the differences between this set of drawings and that from Mr Hughes and Mr Wright and expressed the view that "it would be breach of [the Respondents'] fundamental procedural rights for the Tribunal to rely on demonstrative exhibits produced by one Party as the primary images to be used by the Tribunal in adjudging the Parties' competing claims" and requested "that the Tribunal use [the Respondents' 1 November 2021 Drawings] at the hearing and in their deliberation process".
10. The Tribunal continues to find it important to have illustrations of the wellbores as assistance when following the explanations of the Parties and their experts. It does not wish to spend time at the Hearing on explanations about the differences between the three sets of drawings that now have been produced.

11. Given that the Parties' experts, in their account of the "sequence of events" have illustrated these events by drawings, the Tribunal prefers to refer to these drawings as they had been produced. In order not to privilege the representation by the expert of one of the Parties over those of another, the Tribunal confirms its request to receive from the Respondents explanations how their understanding of the events differs from that represented by Mr Wright. If the Respondents wish to illustrate these explanations by reference not only to the Hughes drawings on the record but also by referencing aspects of the 1 November 2021 Drawings, the Respondents may do so, provided that they explain also how the information differs from that represented in Mr Hughes' drawings and identify the sources from which the Respondents have taken the differing information.

Timeline for submission of demonstratives

12. Following the discussions at the PHC with respect to the time for the production of demonstrative exhibits different in form or content from documents previously produced (21 October 2021 PHC, Summary Minutes, paragraph 18), the Tribunal determines that they must be submitted to the Tribunal and the opposing Party 48 hours before their use. Exceptions for a shorter lead time must be requested from the Tribunal before such submission.

On behalf of the Arbitral Tribunal

[signed]

Michael E. Schneider

President

3 November 2021