

**SUPPLEMENTAL RULES OF PROCEDURE**  
**IN THE NEUTRAL EXPERT PROCEEDINGS**  
**UNDER THE INDUS WATERS TREATY 1960**  
**IN RESPECT OF THE RATLE AND KISHENGANGA HYDROELECTRIC PLANTS**

**WHEREAS** on 19 September 1960, the Governments of the Republic of India and the Islamic Republic of Pakistan (collectively, the “Parties”), together with the International Bank for Reconstruction and Development (the “Bank”), concluded the Indus Waters Treaty (the “Treaty”);

**WHEREAS** on 13 October 2022, the Bank, pursuant to Article IX and Annexure F of the Treaty and after consultation with each of the Parties, appointed Mr. Michel Lino as the neutral expert in the present proceedings (the “Neutral Expert”);

**WHEREAS**, pursuant to Paragraph 4 of Annexure F to the Treaty, the Terms of Retainer of the Neutral Expert were fixed on 2 May 2023 upon the signature thereof by the Neutral Expert on that date after their signature by the representatives of each Party (the “Terms of Retainer”);

**WHEREAS**, pursuant to Paragraph 6 of Annexure F to the Treaty, “the procedure with respect to each reference to a Neutral Expert shall be determined by him, provided that (a) he shall afford to each Party an adequate hearing; (b) in making his decision, he shall be governed by the provisions of this Treaty and by the *compromis*, if any, presented to him by the [Permanent Indus] Commission; and (c) without prejudice to the provisions of Paragraph 3, unless both Parties so request, he shall not deal with any issue of financial compensation”;

**WHEREAS** the Neutral Expert has consulted the Parties regarding the procedural rules and the work programme to be adopted in these Neutral Expert proceedings, and has received their views orally at the First Meeting held from 27-28 February 2023 and in writing;

**NOW THEREFORE** the Neutral Expert hereby issues the following Supplemental Rules of Procedure (the “Rules”), pursuant to Paragraph 6 of Annexure F of the Treaty.

## **1. SCOPE OF APPLICATION**

- 1.1 These Neutral Expert proceedings shall be conducted in accordance with the relevant provisions of the Treaty, including its Annexure F, the Terms of Retainer, and these Rules. These Rules shall apply subject to the Treaty.
- 1.2 These Rules are subject to such modifications or additions as the Neutral Expert may determine after ascertaining the views of the Parties.

## **2. THE NEUTRAL EXPERT'S MISSION**

- 2.1 The mission of the Neutral Expert is defined by the Treaty and the "Points of Difference" notified by the Republic of India.
- 2.2 The Republic of India has stated the "Points of Difference" between the Parties in the enclosure to its letter to the Bank dated 4 October 2016. The Points of Difference are appended to these Rules as Annex 1.
- 2.3 In accordance with Paragraph 7 of Annexure F to the Treaty and Article IX(2)(b) of the Treaty, the Neutral Expert shall, after hearing both Parties, decide whether any particular difference falls within Part 1 of Annexure F. Should he decide that the difference so falls, he shall proceed to render a decision on the merits; should he decide otherwise, he shall inform the Permanent Indus Commission (the "Commission") that, in his opinion, the difference should be treated as a dispute. Should the Neutral Expert decide that only a part of the difference so falls, he shall, at his discretion, either: (a) proceed to render a decision on the part which so falls, and inform the Commission that, in his opinion, the part which does not so fall should be treated as a dispute, or (b) inform the Commission that, in his opinion, the entire difference should be treated as a dispute.
- 2.4 When carrying out his tasks, the Neutral Expert may express his tentative views from time to time, but these will not be binding on him for the purposes of his final decision. The Neutral Expert will provide the Parties with a draft of his final decision for their comments.

## **3. WORK PROGRAMME**

- 3.1 The sequence and timing of submissions, meetings, site visits and other procedural steps shall be as set out in the Work Programme appended to these Rules as Annex 2 (the "Work Programme"), subject to such modifications as the Neutral Expert may adopt after ascertaining the views of the Parties.

#### **4. NOTICE AND PERIODS OF TIME**

- 4.1 For the purposes of these proceedings, any notice, including a notification, communication, submission or proposal, is deemed to have been received by the Neutral Expert when it has been delivered to the Registry (which will be appointed by the Neutral Expert), and by a Party when it has been delivered to the designated (authorized) representatives of that Party. A notice transmitted by electronic means is deemed to have been received on the day it is sent.
- 4.2 For the purposes of calculating a period of time in these proceedings, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-work day in the State of the Party concerned, the period is extended until the first work day which follows. Official holidays or non-work days occurring during the running of the period of time are included in calculating the period.
- 4.3 Unless otherwise provided, all time limits expire at midnight in Paris, France on the relevant date.
- 4.4 The Neutral Expert may, after ascertaining the views of the Parties, extend or abridge any period of time set in these proceedings. The Neutral Expert may extend such periods of time without ascertaining the views of the Parties in case of urgency.

#### **5. REPRESENTATION AND ASSISTANCE**

- 5.1 Each Party shall be represented by one or more designated (authorized) representatives. Each Party may also be represented by counsel and other persons chosen by that Party. Each Party has communicated the name and address of its designated (authorized) representative to the Neutral Expert.
- 5.2 To avoid possible conflicts of interest after the appointment of the Neutral Expert, any proposed changes by a Party of designated (authorized) representatives or counsel shall be communicated by that Party to the Neutral Expert and the Registry and copied to the other Party at the earliest possible date.

#### **6. LANGUAGE**

- 6.1 The language of the proceedings is English. Accordingly, any decision by the Neutral Expert, including any procedural determination, and any correspondence sent by the Neutral Expert shall be communicated to the Parties in English only.

- 6.2 Any submissions or correspondence from the Parties shall be communicated in English. Any document submitted to the Neutral Expert that is written in a language other than English shall be accompanied by a translation into English of the relevant excerpts and of any such portions of the document as are necessary to put the relevant excerpts in context, provided that the Neutral Expert may require a more complete or full translation of the document at the request of a Party or on his own initiative.
- 6.3 Certified translations shall not be required unless requested by the Neutral Expert or a Party or there is a dispute over the accuracy of the translation.

## **7. COMMUNICATIONS**

- 7.1 The Parties shall send all communications for the attention of the Neutral Expert by e-mail to the Registry, for onward transmission to the Neutral Expert, his assistants and the opposing Party.
- 7.2 All communications from the Neutral Expert and the Registry to the Parties will be made by e-mail or courier.
- 7.3 Written communications shall be sent to:
- |                             |   |
|-----------------------------|---|
| Parties:                    | the addresses of the designated (authorized) representatives, representatives and counsel as set out, for Pakistan, in Section 1 of the draft version of the Terms of Retainer circulated by the Neutral Expert on 7 March 2023, and, for India, the letter of the Republic of India dated 31 March 2023; |
| Neutral Expert:             | the address set forth in section 1 of the Terms of Retainer;  |
| Technical Assistant:        | the address set forth in section 2 of the Terms of Retainer;  |
| Legal Advisor/<br>Registry: | the addresses to be advised by the Neutral Expert in due course.  |
- 7.4 Any change of name, description, address, telephone number, facsimile number or e-mail address shall immediately be notified by the Party concerned to the Neutral Expert and the Registry. Failing such notification, communications sent in accordance with this section shall be valid.

## **8. WRITTEN SUBMISSIONS**

- 8.1 Together with any written submission, the Parties shall submit all documentary, witness, expert, and other evidence and any authorities (such as treaties, laws,

decrees or judicial decisions) upon which they intend to rely in support of that submission.

- 8.2 The Parties' written submissions shall be organized in consecutively numbered paragraphs, and each page shall be numbered. All written submissions shall contain a hyperlinked table of contents.
- 8.3 The Parties shall in principle set out their contentions in full in their respective Memorial or Counter-Memorial and associated documentary materials. The Parties may include with their Reply and Rejoinder only submissions, documents and evidence responding or rebutting to matters raised by the other Party in their respective Memorial or Counter-Memorial, without prejudice to the right of the Parties to present their arguments on any questions or new issues raised by the Neutral Expert or arising after the filing of their first round written submissions.
- 8.4 On or before the day of the deadline fixed by the Neutral Expert, the submitting Party shall submit an electronic copy of its written submission, together with supporting evidence and authorities, to the Registry, which shall communicate it to the Neutral Expert and his assistants and simultaneously to the other Party. This may be done by e-mail, file-sharing software or a link to a document repository.
- 8.5 Upon request by the other Party, the submitting Party shall also provide, within a reasonable period of time, one confirming hard copy to the other Party, ordinarily by courier to the Commissioner for Indus Waters of that Party.
- 8.6 Subject to paragraph 8.7, the Parties shall produce complete copies of the documents submitted. Originals of documents shall be submitted only at the specific request of the Neutral Expert or the other Party. Electronic copies of written submissions, witness statements and expert reports shall be in searchable Adobe Acrobat (PDF) format. Electronic copies of factual exhibits and legal authorities shall be submitted in searchable PDF format unless the native form of the document is required to preserve information in, and/or the functionality of, the document, or the document does not permit of it being rendered word-searchable in full or in part.
- 8.7 If a factual exhibit or legal authority is lengthy and relevant only in part, it will be sufficient to provide the relevant part only, provided that the Neutral Expert may require the submission of a more complete or full version of the document at the request of a Party or on his own initiative.

## **9. EVIDENCE**

- 9.1 Each Party shall have the burden of proving the facts relied on to support its submissions.

- 9.2 The Neutral Expert shall determine the admissibility, relevance, materiality and weight of the evidence adduced.
- 9.3 Each document submitted to the Neutral Expert shall be given an exhibit number (for documents submitted by the Republic of India, IN-1, IN-2, etc. for evidence and INA-1, INA-2, etc. for authorities; for the documents submitted by the Islamic Republic of Pakistan, PK-1, PK-2, etc. for evidence and PKA-1, PKA-2, etc. for authorities) and each page of each document shall be numbered. English translations of documents shall be identified with the suffix "T" (e.g. IN-1T / PK-1T). Hyperlinked indexes of documentary annexes shall be provided.
- 9.4 At any time during the proceedings, and after ascertaining the views of the Parties, the Neutral Expert may require the Parties to produce documents, exhibits or other evidence within such a period of time as the Neutral Expert shall determine. The Neutral Expert shall take note of any refusal to do so as well as any reasons given for such refusal.
- 9.5 Witnesses, including expert witnesses, who are presented by the Parties to testify to the Neutral Expert on any issue of fact or expertise may be any individual. Unless otherwise directed by the Neutral Expert, statements by witnesses must be presented in writing and signed by them.
- 9.6 The Neutral Expert may take all appropriate measures in order to establish the facts.

## **10. MEETINGS**

- 10.1 The Neutral Expert shall hold meetings with the Parties in accordance with the Work Programme. To the extent not already provided in the Work Programme, the date and place of each meeting shall be set by the Neutral Expert, after ascertaining the views of the Parties. The Neutral Expert shall give the Parties adequate advance notice of the date, time and place of any meeting.
- 10.2 The Registry shall make arrangements for a verbatim record of each meeting to be produced. A Party may request the inclusion in the verbatim record of footnotes limited to references to evidence, authorities and submissions, and not including any argument or statement of fact.
- 10.3 The Neutral Expert may hold meetings with his assistants and the Registry at any time and place he deems appropriate, as well as by means of video or audio-conferencing.

## **11. SITE VISITS**

- 11.1 The Neutral Expert shall conduct site visits in accordance with the Work Programme. The Neutral Expert shall have full and unrestricted access to any place or site and any technical data related to the differences<sup>1</sup> between the Parties. The Parties shall participate in any site visit or inquiry.
- 11.2 The Neutral Expert shall, after ascertaining the views of the Parties, determine the date and scope of any site visit, its program, the procedure to be followed, and other particulars.

## **12. ASSISTANTS AND EXPERTS APPOINTED BY THE NEUTRAL EXPERT**

- 12.1 Having ascertained the views of the Parties, the Neutral Expert has appointed Mr. Luc Deroo as his Technical Assistant. The Neutral Expert may, after ascertaining the views of the Parties, also appoint a legal assistant, as well as one or more independent experts to report to him on specific issues to be determined by the Neutral Expert.
- 12.2 Before appointing a legal assistant or independent expert, the Neutral Expert shall consult the Parties regarding the identity, qualifications, and impartiality and independence of any candidate.
- 12.3 The Neutral Expert shall not delegate his decision-making function to any assistant or expert.

## **13. DECISIONS OF THE NEUTRAL EXPERT**

- 13.1 The Neutral Expert's decisions shall be rendered and have effect in accordance with paragraphs 9 and 11 of Annexure F to the Treaty.
- 13.2 The Neutral Expert's decisions shall be governed by the provisions of the Treaty and shall be based on information presented by the Parties, information arising from site visits and any other information which the Neutral Expert considers to be relevant, provided that, before reaching any decision, the Neutral Expert shall afford each Party an adequate hearing. The Parties shall be afforded no less than one month from their receipt of the Neutral Expert's draft decision to provide written comments, and another month to provide additional comments in response to each other's submissions. The Neutral Expert shall also hold a meeting, or meetings, with the Parties in order to afford them an opportunity to make oral

---

<sup>1</sup> The term "differences" is used without prejudice to the Neutral Expert's determination in due course of whether any particular difference falls within Part 1 of Annexure F or should be treated as a dispute.

submissions on his draft decision.

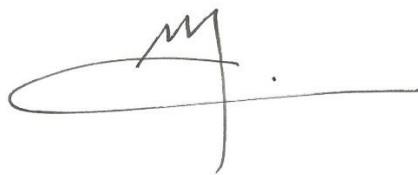
13.3 Within thirty (30) days after the receipt of a decision rendered by the Neutral Expert, either Party, with notice to the other Party, may request the Neutral Expert to correct in that decision any errors in computation, any clerical or typographical errors, or any errors of similar nature. If the Neutral Expert considers that the request is justified, he shall issue a correction in writing, and Article 13.1 of these Rules shall apply. The Neutral Expert may within thirty (30) days after the communication of a decision make such corrections on his own initiative.

#### **14. TRANSPARENCY AND CONFIDENTIALITY**

14.1 The appointment of the Neutral Expert and the existence of these Neutral Expert proceedings are matters already in the public domain. Accordingly, the Registry shall identify on its website the names of the Parties, the Neutral Expert, and the designated (authorized) representatives, representatives and counsel for the Parties. The Parties will have an opportunity to review the content of any website relating to these proceedings prior to publication by the Registry.

14.2 These Rules and procedural and substantive decisions of the Neutral Expert shall be made publicly available, including on the website of the Registry.

14.3 Unless the Neutral Expert directs otherwise after ascertaining the views of the Parties, the Parties, the Neutral Expert, the Registry and any assistants engaged by the Neutral Expert shall maintain strict confidentiality in respect of all other aspects of the proceedings.



---

**Mr. Michel Lino**  
**Neutral Expert**

**[01 June 2023]**

**ANNEX 1:**  
**POINTS OF DIFFERENCE**

**ENCLOSED WITH THE LETTER OF THE COMMISSIONER FOR INDUS WATERS OF  
THE REPUBLIC OF INDIA TO THE BANK DATED 4 OCTOBER 2016**

**STATEMENT OF POINTS OF DIFFERENCE**

Based on the correspondences and the discussions held in Permanent Indus Commission, following points of difference have arisen:

**A. KISHENGANGA HYDROELECTRIC PLANT**

- i. India is of the considered view that the pondage of 7.55 million cubic metre (MCM) provided in the design is within the limits of the maximum pondage permitted in accordance with paragraph 8(c) of Annexure D and does not exceed twice the pondage required for Firm Power. The pondage provided by India is also in accordance with paragraph 2(c) of Annexure D i.e. Live Storage of only sufficient magnitude to meet fluctuations in the discharge of the turbines arising from variations in the daily and the weekly loads of the plant. The pondage provided by India meets the operational restriction imposed by Paragraph 15 of Annexure D.

India is also of the view that the intakes for the turbines are located at the highest level consistent with satisfactory and economical construction and operation of the Plant in accordance with Paragraph 8 (f) of Annexure D.

Pakistan side does not agree with India's position.

- ii. India is of the considered view that outlets below the Dead Storage Level provided in the design of the Plant are in accordance with Paragraph 8(d) of Annexure D to the Treaty, and are of minimum size and located at the highest level. The proposed spillway configuration to pass the design discharge of 2000 cumec and also for sediment sluicing is the optimal configuration within the topographical constraints.

Pakistan side does not agree with India's position.

- iii. India is of the considered view that the design of the Plant conforms to the design criterion specified in Paragraph 8 (e) of Annexure D to the Treaty as the conditions at the site of the Plant make it necessary to provide a gated spillway. Moreover, the bottom level of the gates in normal closed position is at the highest level consistent with sound and economical design and satisfactory construction and operation of the works.

Pakistan side does not agree with India's position.

**B. RATLE HYDROELECTRIC PLANT**

- i. India is of the considered view that 2 meters freeboard provided in the design of the Plant is in accordance with Paragraph 8(a) of Annexure D and does not make the works themselves capable of raising artificially the water level in the Operating Pool above the Full Pondage Level (FPL) specified

Pakistan side does not agree with India's position.



- ii. India is of the considered view that the pondage of 23.86 million cubic metre (MCM) provided in the design is within the limits of the maximum pondage permitted in accordance with paragraph 8(c) of Annexure D and does not exceed twice the pondage required for Firm Power. The pondage provided by India is also in accordance with paragraph 2(c) of Annexure D of the Treaty i.e. Live Storage of only sufficient magnitude to meet fluctuations in the discharge of the turbines arising from variations in the daily and the weekly loads of the plant. The pondage provided by India meets the operational restriction imposed by Paragraph 15 of Annexure D.

India is also of the view that the intakes for the turbines are located at the highest level consistent with satisfactory and economical construction and operation of the Plant in accordance with Paragraph 8 (f) of Annexure D.

Pakistan side does not agree with India's position.

- iii. India is of the considered view that outlets below the Dead Storage Level provided in the design of the Plant are in accordance with Paragraph 8(d) of Annexure D to the Treaty, and are of minimum size and located at the highest level. The proposed spillway configuration to pass the design discharge of 13814 cumec and also for sediment sluicing is the optimal configuration within the topographical constraints at site.

Pakistan side does not agree with India's position.

- iv. India is of the considered view that the design of the Plant conforms to the design criterion specified in Paragraph 8 (e) of Annexure D to the Treaty as the conditions at the site of the Plant make it necessary to provide a gated spillway. Moreover, the bottom level of the gates in normal closed position is at the highest level consistent with sound and economical design and satisfactory construction and operation of the works.

Pakistan side does not agree with India's position.

  
04/10/16  
(P.K. Saxena)

**ANNEX 2: WORK PROGRAMME**

#	EVENT	PARTY	DATE
1.	First Meeting of the Neutral Expert with the Parties	All	27-28 February 2023
2.	Submission of documentation previously provided by India to Pakistan pursuant to paragraphs 9 and 12 of Annexure D to the Treaty, including the documents that the PCIW has requested regarding the modifications to the RHEP in its letters to India of 8 and 24 February and 24 March 2023	India	5 June 2023
3.	India's Memorial	India	28 July 2023
4.	Second Meeting of the Neutral Expert with the Parties <ul style="list-style-type: none"> <li>– Questions by the Neutral Expert to the Parties</li> <li>– Preparation for the First Site Visit</li> </ul>	All	20-21 September 2023
5.	Pakistan's Statement under Para. 7 of Annexure F to the Treaty	Pakistan	29 September 2023
6.	First Site Visit	All (upon consultation with the host State)	a period of appropriate length between 9 October and 11 November 2023
7.	India's Para. 7 Reply	India	10 November 2023
8.	Third Meeting of the Neutral Expert with the Parties <ul style="list-style-type: none"> <li>– Presentations of the Parties' Submissions on Para. 7</li> <li>– Questions by the Neutral Expert to the Parties</li> </ul>	All	[2 days in the periods of 27 November-30 December or 12-15 December 2023]
9.	Decision on the Para. 7 Issues	Neutral Expert	In or around February 2024
10.	Pakistan's Counter-Memorial	Pakistan	29 July 2024

<b>11.</b>	<p>Fourth Meeting of the Neutral Expert with the Parties</p> <ul style="list-style-type: none"> <li>– Presentation of India’s Memorial and Pakistan’s Counter-Memorial</li> <li>– Questions by the Neutral Expert to the Parties</li> <li>– Preparation for the Second Site Visit</li> </ul>	All	TBD
<b>12.</b>	Second Site Visit	All (upon consultation with the host State)	TBD
<b>13.</b>	India’s Reply	India	TBD
<b>14.</b>	Pakistan’s Rejoinder	Pakistan	TBD
<b>15.</b>	Fifth Meeting of the Neutral Expert with the Parties (if needed)	All	TBD
<b>16.</b>	Neutral Expert’s Synthesis Memorandum	Neutral Expert	TBD
<b>17.</b>	Parties’ Written Comments on the Synthesis Memorandum	Parties	TBD
<b>18.</b>	Circulation by the Neutral Expert of a Draft Decision to the Parties	Neutral Expert	TBD
<b>19.</b>	Parties’ Written Comments on the Draft Decision	Parties	TBD
<b>20.</b>	<p>Sixth Meeting of the Neutral Expert with the Parties</p> <ul style="list-style-type: none"> <li>– Exchange on the Draft Decision</li> </ul>	All	TBD
<b>21.</b>	Parties’ Further Written Comments on the Draft Decision	Parties	TBD
<b>22.</b>	Circulation by the Neutral Expert of a Final Decision to the Parties	Neutral Expert	TBD