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11 April 2025

RE: PCA CASE NO. 2023-14 – INDUS WATERS TREATY NEUTRAL EXPERT PROCEEDINGS (INDIA V. PAKISTAN)

Dear Ms. Mukherjee,  
Dear Mr. Aslam,  
Dear Mr. Akbar,

I write on behalf of the Neutral Expert in the above-referenced matter with respect to Pakistan's request of 11 December 2024 for "the Neutral Expert's urgent, active and engaged consideration of appropriate directions to secure and safeguard a meaningful and effective Neutral Expert procedure".

In this regard, in addition to Pakistan's letter of 11 December 2024, the Neutral Expert recalls Pakistan's letters of 4 February 2025, and 13 February 2025 together with its accompanying enclosures. The Neutral Expert also recalls India's letters of 18 December 2024, 3 February 2025 together with its accompanying enclosure, and 19 February 2025.

### Pakistan's Request

In its letter of 13 February 2025, Pakistan details its request as follows:

18. Pakistan is acutely concerned about the changeable character of India's case and the uncertain and unsupported positions that India is advancing on material issues. As Pakistan has previously observed, just as India's Revised Construction Schedule pushed back by two years, without any explanation, the completion date of the RHEP, and just as India, for two years, failed to provide any construction schedule at all, so is it reasonably conceivable that India may in due course unilaterally and without notice re-revise its Revised Construction Schedule without any, or any sufficient, notice, for purposes of creating facts on the ground in the form of setting in concrete critical parts of the RHEP that would thereafter be almost impossible to unwind. This would be intolerable and would fundamentally undermine the effectiveness of the Neutral Expert process. And it would be no answer to this concern to say that any determination that the Neutral Expert may give in due course could be implemented by India at the level of the operation of the RHEP, as opposed to the design and

construction of the Plant. The Neutral Expert's competence in this case goes to design differences, and design differences only, not to differences with respect to construction and operation. India cannot avoid its design-compliance responsibilities under the Treaty by appealing to the possibility of operational compliance.

19. On this basis, and having careful and close regard to [...] India's Revised Construction Schedule of the RHEP, Pakistan considers that the Neutral Expert should, at the very least:

(a) direct India to provide forthwith, within no more than a fortnight, a detailed and elaborated construction schedule, showing all of the critical path stages (rather than simply India's "Description of Major Activities"), including (i) expanding upon the items set out in Sections E and F of the Revised Construction Schedule, (ii) addressing the RCC or poured concrete construction elements of those stages, and (iii) notifying any and all changes in the design of the RHEP that there may be, whether in consequence of the newly notified RCC construction process or for some other reason, by reference to both the information provided in India's Annexure D, Appendix II notification of 16 August 2012 and at paragraph 55 of and elsewhere in India's Memorial;

(b) seek a formal undertaking that India will not commence the work itemised at E.3 on the Revised Construction Schedule (Concreting upto Crest level of orifice spillway EL 985m), or any subsequent iteration thereof to be transmitted in due course, until at least 30 days after the Second Site Visit for the express purpose of allowing the Neutral Expert a reasonable and timely opportunity to address any implications that he may apprehend may follow from this step for the effectiveness of the Neutral Expert process; and

(c) seek a formal undertaking that India will notify promptly, and at least 45 days in advance of implementation, any changes to the Revised Construction Schedule, or any subsequent iteration thereof to be transmitted in due course, for the express purpose of allowing the Neutral Expert a reasonable and timely opportunity to address any implications that he may apprehend may follow for the effectiveness of the Neutral Expert process.

Separate and either in addition or in the alternative, Pakistan requests the Neutral Expert to:

direct India to address and elaborate precisely, within a fortnight, on the following:

(a) the detail and scope of the proposed RCC construction process;

(b) the items on the Revised Construction Schedule to which it is proposed the RCC process would apply;

(c) any changes to the design of the RHEP, whether in consequence of the RCC process or otherwise, that depart from the design notification to Pakistan on 16 August 2012 under Appendix II to Annexure D of the Treaty or addressed at paragraph 55 of or elsewhere in India's Memorial; and

(d) having regard to the Record of the 109th Meeting of the Permanent Indus Commission that took place from 22nd to 25th September 2013 — which records (*inter alia*) the following views by India's Commissioner with respect to the RHEP Spillway Arrangement:

“41. Indian side explained the site condition of Ratle dam and spillway. It was stated that the geo-morphological condition of the project site was already clarified vide ICIW letter No.3/5/2007-IT dated 11th September, 2013. The spillway has to be accommodated in a gorge having limited width. It is difficult to accommodate the energy dissipation arrangement which has to be of equal width of bank to bank distances of 123.50 m for the surface spillway suggested by Pakistan. This arrangement will need huge cutting on both banks and will render surrounding face of the rock prone to dislodging and sliding. It will also need huge extra quantity of RCC and foundation treatment. Overall the proposition is not viable and is unsafe.” —

whether there has been any change to India's position on this matter and, if so, the nature and detail of India's changed position. (Pakistan's letter of 13 February 2025, para. 22)

In its letter of 11 December 2024 (para. 19), Pakistan categorizes in broader terms the steps that the Neutral Expert may take in connection with its request. These are:

- (a) recommendations regarding design modifications of the RHEP, aimed at preserving the latitude of the Neutral Expert to make substantive determinations in due course, (b) recommendations regarding the RHEP construction schedule, and/or (c) affirmations of binding and applicable principles applicable to RHEP construction to ensure Treaty-compliant design, construction and operation, such as (for example) the prohibition under the Treaty of drawdown flushing for purposes of sediment management.

According to Pakistan, the Neutral Expert's competence to grant its requests emanates from "an inherent competence to take steps to safeguard the effectiveness of [the] process", the chapeau of Paragraph 6 of Annexure F to the Treaty, and Paragraph 8 of Annexure F (Pakistan's letter of 13 February 2025, para. 21).

Paragraph 6 of Annexure F provides as follows:

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 compromise, if any, presented to him by the 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.

Paragraph 8 of Annexure F provides that "[e]ach Government agrees to extend to the Neutral Expert such facilities as he may require for the discharge of his functions".

In Pakistan's view, its requests would not amount to a prescription of interim measures or provisional findings. They are instead "entirely procedural in nature and as such fully within the competence of the Neutral Expert" (Pakistan's letter of 13 February 2025, para. 21).

## **India's Response**

India invites the Neutral Expert to "reject [Pakistan's application] summarily" (India's letter of 3 February 2025, paras. 7, 12; India's letter of 19 February 2025, para. 4). It asserts that Pakistan's "attempt to seek 'undertakings' from India, which would have the same effect as interim or provisional measures, should be dismissed summarily" (India's letter of 19 February 2025, para. 4).

## **Neutral Expert's Analysis**

### **(a) Request for a Detailed and Elaborated RHEP Construction Schedule**

Pakistan requests the Neutral Expert to "direct India to provide...a detailed and elaborated construction schedule showing all of the critical path stages".

As a starting point, the Neutral Expert understands Pakistan's request for a detailed RHEP Construction Schedule to be a request for information. The procedural propriety of requests for information, considering the practice in these proceedings, does not appear to be in controversy between the Parties. In this context therefore, the Neutral Expert considers Pakistan's request for a detailed RHEP Construction Schedule to be a procedural matter which falls within the scope of Paragraphs 6 and 8 of

Annexure F, and, although not cited by Pakistan, Paragraphs 9.4 and 9.6 of the Supplemental Rules of Procedure.

The Neutral Expert notes that the RHEP Construction Schedule submitted by India on 3 February 2025 identifies the following 7 major activities further broken down into different steps: (i) Award of Works; (ii) Mobilisation; (iii) Diversion Works; (iv) Cofferdam; (v) RCC Dam and Spillway; (vi) Power Intake; and (vii) Power House. These major activities and the steps identified therein identify most of the critical timelines of the construction of the RHEP relevant to these proceedings. Save to the extent detailed in (i) below, the Neutral Expert does not consider it necessary to request further details regarding the RHEP Construction Schedule at this point. Therefore, as set out in (i) to (iii) below, Pakistan's request for further details of the RHEP Construction Schedule is partly granted.

*i. Expanding upon items in Sections E and F of the RHEP Schedule*

Pakistan requests the production of a detailed RHEP Construction Schedule expanding upon the items set out in Section E (RCC Dam and Spillway) and Section F (Power Intake) of the RHEP Construction Schedule submitted by India on 3 February 2025.

The Neutral Expert observes that the steps identified in Sections E and F of the RHEP Construction Schedule and their timelines, while detailing India's activities in a manner that permit the Neutral Expert to appreciate the construction process in general, do not include certain milestones specified in the Neutral Expert's request for information dated 10 July 2024 (Request No. 28), which were subsequently included in India's tentative schedule of construction (Appendix to India's letter of 31 July 2024, item 28). In particular, the Neutral Expert notes that Sections E and F of the RHEP Construction Schedule submitted by India on 3 February 2025 does not contain timelines for the procurement of intake and spillway gates.

In order to permit a reasonable appreciation of the RHEP construction process, the Neutral Expert is of the view that he would be assisted by details of the timelines for the procurement of spillway and intake gates.

Accordingly, India is requested to submit, by **Friday, 25 April 2025**, an updated RHEP Construction Schedule reflecting the timelines for the procurement of spillway and intake gates.

*ii. Addressing the RCC elements of items in Sections E and F of the RHEP Schedule*

Pakistan requests the Neutral Expert to direct India to provide a detailed RHEP Construction Schedule "addressing the RCC or poured concrete construction elements" of items in Sections E and F. The Neutral Expert takes note of Pakistan's broader additional or alternative requests for an elaboration of "the detail and scope of the proposed RCC construction process" and "the items on the Revised Construction Schedule to which it is proposed the RCC process would apply" (Pakistan's letter of 13 February 2025, paras. 22(a) and (b)).

It is unclear from the Parties' submissions and the Neutral Expert does not consider details regarding the RCC elements of Sections E and F of the RHEP Construction Schedule to be relevant to a consideration of the effectiveness of the proceedings. Instead, with the addition of the information requested in (i) above, the Neutral Expert is of the view that the RHEP Construction Schedule, which is complemented by submissions and data on the record of the proceedings, sufficiently details the main construction activities relevant to the present proceedings and their timelines. Moreover, in the light of the Parties' opposing positions, addressed in (iii) below, regarding the relevance of the RCC process to issues in the Points of Difference, the Neutral Expert does not consider it necessary to seek further details on the RCC process at this juncture.

Pakistan's requests in this regard, including its requests in paragraph 22(a) and (b) of its letter of 13 February 2025, are therefore denied.

*iii. Notifying all changes in the design of the RHEP*

Pakistan requests the Neutral Expert to direct India to provide a detailed RHEP Construction Schedule "notifying any and all changes in the design of the RHEP that there may be, whether in consequence of the newly notified RCC construction process or for some other reason, by reference to both the information provided in India's Annexure D, Appendix II notification of 16 August 2012 and at paragraph 55 of and elsewhere in India's Memorial". Similarly, in paragraphs 22(c) and (d) of its letter of 13 February 2025, Pakistan requests the Neutral Expert to direct India to "address and elaborate precisely" any changes to the RHEP design that depart from the notification of 16 August 2012 and India's Memorial, and any changes to India's position regarding the RHEP spillway arrangement as recorded at the 109<sup>th</sup> Meeting of the Permanent Indus Commission.

In furtherance of its position, Pakistan asserts that "India did not originally conceive of the RHEP as an RCC dam but rather as a conventional concrete dam, and, ... India had not notified either Pakistan or the Neutral Expert that it was intent on changing the design and construction of the RHEP to an 'RCC Dam'." (Pakistan's letter of 4 February 2025, para. 4. See also, Pakistan's letter of 13 February 2025, para. 7). It considers that India's reference to the RHEP as an RCC dam in the RHEP Construction Schedule of 3 February 2025 "may have material consequential implications for other aspects of the RHEP's design that are in question in the Neutral Expert proceedings and which Pakistan is expected to address in its Counter-Memorial". (Pakistan's letter of 13 February 2025, para. 9. See also Pakistan's letter of 4 February 2025, para. 2). In illustration, Pakistan questions whether "the move to an RCC, as opposed to a poured concrete, construction process [will have an] impact on the type, placement and design dimensions of the RHEP spillways or on the energy dissipation system that India expects to implement". (Pakistan's letter of 13 February 2025, para. 8)

India for its part asserts that "[t]he use of RCC does not in any way bring about a change in the type of the dam or its design aspects which form the subject matter of [the Neutral Expert's] consideration in this proceeding." (India's letter of 19 February 2025, para. 3).

The Neutral Expert notes the Parties' differing views regarding the relevance of the RCC process to issues that have a bearing on the Points of Difference. The Neutral Expert understands that the Parties may address this matter in their submissions on the merits of the Points of Difference. In this respect, the Neutral Expert takes note of Pakistan's indication that "insofar as may be material" Pakistan will address the issue in its Counter-Memorial. (Pakistan's letter of 4 February 2025, para. 5)

The Neutral Expert recalls that in its letter of 19 February 2025 (para. 9), India indicated that physical hydraulic model studies for the spillway and energy dissipation arrangement of the RHEP were pending and assured the Neutral Expert that it will "immediately update" him "should any material change become necessary". The Neutral Expert is satisfied with this assurance.

Based on these considerations, the Neutral Expert does not direct India to provide any further details in this respect.

**(b) Request to seek an undertaking that India will not commence certain work**

Pakistan requests the Neutral Expert to seek a formal undertaking that India will not commence the work itemised at E.3 (Concreting up to Crest level of orifice spillway EL 985m) of the RHEP Construction Schedule until at least 30 days after the Second Site Visit.

India opposes Pakistan's request for an undertaking. It asserts that Pakistan's request for an undertaking "would have the same effect as interim or provisional measures" and further that "[n]either Paragraph 6 of Annexure F nor Paragraph 8...empower the Neutral Expert to issue provisional or interim measures and cannot support Pakistan's demand for India to submit any 'undertakings'". (India's letter of 19 February 2025, para. 4)

The Neutral Expert notes that Paragraph 6 of Annexure F, including its chapeau, relates to his competence to determine the procedure of the proceedings. However, the undertaking which Pakistan requests the Neutral Expert to seek, the effect of which would be to pause concreting of spillway until 30 days after the Second Site Visit, goes beyond the conduct of these proceedings and affects the construction of the RHEP, whose design is the subject matter of the proceedings. Thus, the Neutral Expert is of the view that Paragraph 6 of Annexure F does not empower him to direct India to provide such an undertaking. Likewise, Paragraph 8 of Annexure F relates to facilities for the conduct of the proceedings and does not empower the Neutral Expert to require the undertaking as requested by Pakistan.

For these reasons, Pakistan's request for the Neutral Expert to direct India to provide a formal undertaking that India will not commence concreting up to crest level of spillway at elevation 985m until at least 30 days after the Second Site Visit is denied.

Nonetheless, the Neutral Expert notes that RHEP construction work relating to spillway and intakes is scheduled to commence at the end of 2025 and end in the second half of 2027. At the same time, the Work Programme, as it currently stands, foresees Party submissions and a possible Fifth Meeting in 2026. Subsequent steps preceding the Neutral Expert's final decision will then follow and the Neutral Expert's final decision could reasonably be expected in 2027. Based on the foregoing comparison, it appears that the concreting of spillway and intakes will start and possibly be completed before the Neutral Expert's final decision. The Neutral Expert finds it important to emphasize at this point that his determination could have implications for the design of the RHEP and that, in order to ensure the effectiveness of the decision, modifications may be required to work that has already commenced or been completed, including excavations, concrete structures, mechanical equipment and other components.

The Neutral Expert recalls India's assertion at various points in the proceedings, and specifically in its letter of 18 December 2024, that it "is fully aware of its obligations under the Treaty and the binding effect of a final decision by the NE." In view of this assurance, the Neutral Expert does not emphasize his considerations on this matter any further.

**(c) Request to seek an undertaking that India will notify any changes to the RHEP Construction Schedule**

Pakistan requests the Neutral Expert to seek a formal undertaking that India will notify promptly or at least 45 days in advance of implementation, any changes to the RHEP Construction Schedule. According to Pakistan, the purpose of such an undertaking is to allow "the Neutral Expert a reasonable and timely opportunity to address any implications that he may apprehend may follow for the effectiveness of the Neutral Expert process". (Pakistan's letter of 13 February 2025, para. 19(c)).

The Neutral Expert considers, and the Parties no doubt appreciate, that he will be assisted in his consideration of the Points of Difference by up-to-date information and data regarding the RHEP. While the Neutral Expert does not consider it necessary to seek an undertaking, he considers that a request to India in this respect is sufficient. Accordingly, the Neutral Expert requests India to continue to provide updated versions of the RHEP Construction Schedule on an ongoing basis and without delay as these updates are made.

[REDACTED]  
[REDACTED]

Yours sincerely,



Balla Galma Godana  
Legal Counsel

cc: *For India:*

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