

PCA Case No. 2023-01

**IN THE MATTER OF
THE INDUS WATERS WESTERN RIVERS ARBITRATION**

- before -

**THE COURT OF ARBITRATION CONSTITUTED
IN ACCORDANCE WITH THE INDUS WATERS TREATY 1960**

- between -

THE ISLAMIC REPUBLIC OF PAKISTAN

- and -

THE REPUBLIC OF INDIA

PROCEDURAL ORDER NO. 17

(SECOND PHASE ON THE MERITS)

COURT OF ARBITRATION:

**Professor Sean D. Murphy (Chairman)
Professor Wouter Buytaert
Professor Jeffrey P. Minear
Judge Awn Shawkat Al-Khasawneh
Dr. Donald Blackmore**

SECRETARIAT:

The Permanent Court of Arbitration

21 November 2025

WHEREAS, by way of a Request for Arbitration dated 19 August 2016, Pakistan instituted arbitration proceedings pursuant to Article IX(5) and Paragraph 2(b) of Annexure G to the Indus Waters Treaty 1960 (the “**Treaty**”);

WHEREAS in accordance with Paragraphs 4 to 9 of Annexure G to the Treaty, a Court of Arbitration (the “**Court**”) has been constituted;

WHEREAS on 6 July 2023, the Court issued an Award on the Competence of the Court (the “**Award on Competence**”), finding that the Court is competent to consider and determine the disputes set forth in Pakistan’s Request for Arbitration;

WHEREAS on 6 July 2023, the Court issued Procedural Order No. 6, determining that the Court would conduct these proceedings in a phased manner, and that the next phase of the proceedings (the “**First Phase on the Merits**”) would address certain questions that arise from the Request for Arbitration concerning the overall interpretation or application of Article III of the Treaty, and Paragraph 8 of Annexure D thereto, in addition to a related question concerning the legal effect of past decisions issued by dispute resolution bodies established pursuant to Article IX of the Treaty;

WHEREAS on 10 August 2023, the Court issued Procedural Order No. 8, granting Pakistan’s application to amend its Request for Arbitration;

WHEREAS on 27 June 2025, the Court issued a Supplemental Award on the Competence of the Court, finding that India’s position on “abeyance” of the Treaty does not limit the competence of the Court over this dispute, which the Court previously affirmed in its Award on Competence, and finding that the Court has a continuing responsibility to advance these proceedings in a timely, efficient, and fair manner, notwithstanding India’s position on “abeyance”;

WHEREAS on 8 August 2025, the Court issued an Award on Issues of General Interpretation of the Indus Waters Treaty (the “**Award on General Interpretation**”), reaching findings on the questions at issue for the First Phase on the Merits;

WHEREAS on 19 September 2025, Pakistan transmitted a letter to the Court pursuant to Paragraph 27 of Annexure G to the Treaty, in which it sought “the Court’s clarification of a number of points arising out of the Award [on General Interpretation]” (the “**Request for Clarification**”);

WHEREAS on 8 November 2025, the Court issued a Decision on Pakistan’s Request for Clarification of the Award on Issues of General Interpretation (the “**Decision on the Request for Clarification**”), in which the Court provided clarifications with respect to some aspects of the Request for Clarification, but declined to provide clarifications with respect to other aspects of Pakistan’s Request, including Pakistan’s request for a clarification as to how the Treaty regulates the basis upon which India must determine the installed capacity and anticipated load of a proposed Annexure D, Part 3 HEP, and, once determined, how these elements are to be taken into account for purposes of the calculation of maximum Pondage;

WHEREAS in its Decision on the Request for Clarification, the Court recalled that it had concluded in its Award on General Interpretation that, with respect to whether and how the Treaty regulates the basis upon which India may determine such installed capacity and anticipated load, “Pakistan or India may seek to pursue the matter through the Treaty’s dispute resolution procedures, including a further phase of these proceedings” and further stated in its Decision that:

Were either Party to seek leave in that regard, the Court is open to conducting a further phase of these proceedings on this issue. Such a phase would provide an opportunity for written submissions from both Parties on this issue that, *inter alia*, identify the relevant Treaty provisions, the relevant documents in the record, and the Parties’ current and past positions and practice, including in the

Baglihar Neutral Expert Proceedings. The Court takes note in this regard of Pakistan's statement at the Case Management Conference that:

We would much rather that you deliberate fully and properly, and that you come to the best reliable conclusions that you can come to. And if that means on this particular issue that there needs to be another procedure, well, of course, then there absolutely needs to be another procedure.

WHEREAS on 8 November 2025, the Court issued Procedural Order No. 16, indicating, among other things, that either Party may request a further phase of the proceedings specific to “resolving the basis upon which India must determine the installed capacity and anticipated load of a proposed Annexure D, Part 3 HEP, and, once determined, how these elements are to be taken into account for purposes of the calculation of maximum Pondage” (the “**Capacity/Load/Pondage Calculation Issues**”);

WHEREAS on 13 November 2025, Pakistan requested a further phase of the proceedings specific to the Capacity/Load/Pondage Calculation Issues (“**Pakistan's Request**”);

WHEREAS on 18 November 2025, the Court invited comments from India regarding Pakistan's Request by no later than 20 November 2025, by which date no comments were received.

THE COURT OF ARBITRATION HEREBY DECIDES:

1. Further Phase on the Merits

1.1 Pakistan's Request is hereby **granted**.

1.2 The Court shall conduct a further phase of the proceedings (the “**Second Phase on the Merits**”) specific to “resolving the basis upon which India must determine the installed capacity and anticipated load of a proposed Annexure D, Part 3 HEP, and, once determined, how these elements are to be taken into account for purposes of the calculation of maximum Pondage”.

2. Written Submissions in the Second Phase on the Merits

2.1 On or before **8 December 2025**, India is invited to indicate to the Court whether it intends to participate in the Second Phase on the Merits, including by filing a Counter-Memorial and attending a hearing. In the event that India indicates an intention to do so, the Court shall schedule a Case Management Conference with the Parties to address the procedure to be adopted for the Second Phase on the Merits.

2.2 In the event that India does not inform the Court of its intention to participate in the Second Phase on the Merits, then on or before **19 January 2026**, Pakistan shall file its Memorial for the Second Phase on the Merits.

2.3 In that Memorial, Pakistan is requested to address the following, in light of the Court's Award on General Interpretation:

2.3.1 The meaning of the terms “capacity” and “load” as used in the Treaty, including in Annexure D, Part 3;

2.3.2 The meaning of any engineering concepts and terminology (including “installed capacity”, “load curve”, and “anticipated load”) that are relevant to run-of-river hydro-electric plants, especially with respect to the calculation of pondage;

2.3.3 In relation to the written record of the present proceedings:

- (a) the data India has shared with Pakistan in respect of the capacity and load of Annexure D, Part 3 HEPs, as well as India's calculations for the maximum Pondage for such HEPs; and
 - (b) discussions of the capacity and load of proposed Annexure D, Part 3 HEPs, as well as calculations of the maximum Pondage for such HEPs found in: (i) all correspondence between the Parties' respective Commissioners for Indus Waters, (ii) all correspondence between other officials, and (iii) records of the Permanent Indus Commission;
- 2.3.4 In relation to all Annexure D, Part 3 HEPs previously notified by India to Pakistan under the Treaty up to and including the Baglihar HEP:
- (a) the basis upon which Pakistan understands India to have determined the installed capacity and anticipated load, as well as how those elements were taken into account in its calculation of maximum Pondage; and
 - (b) any concerns expressed by Pakistan to India with respect to (a).
- 2.3.5 Pakistan's current position as to the basis upon which India must determine the installed capacity and anticipated load of a proposed Annexure D, Part 3 HEP, including what limits, if any, the Treaty places on India's discretion in this respect;
- 2.3.6 Pakistan's current position as to how those elements (once determined), along with others, are to be taken into account for purposes of the calculation of maximum Pondage under Paragraph 8(c) of Annexure D to the Treaty; and
- 2.3.7 Any other issues Pakistan considers relevant to a decision on the questions at issue for the Second Phase on the Merits.

3. Oral Submissions in the Second Phase on the Merits

- 3.1 In the event that India does not inform the Court of its intention to participate in the Second Phase on the Merits, then an oral hearing shall be held from **2 to 3 February 2026** in the Peace Palace, The Hague, the Netherlands (the "**Hearing on the Second Phase on the Merits**").
- 3.2 On or before 24 January 2026, the Court shall invite the Parties to address at the Hearing any specific issues or questions relating to the issues to be determined in the Second Phase on the Merits.
- 3.3 A detailed schedule for and modalities of the Hearing shall be addressed in due course in a further procedural order.

4. Leave to Apply

- 4.1 Any Party has leave to apply to the Court for a variation of this Order, giving particulars of the variation sought and the reason for it.
- 4.2 Any Party may, at any point in these proceedings, request that the Court convene a conference with the Parties to address any procedural aspect of these proceedings. The Court shall arrange to confer with the Parties in person or by videoconference, according to the circumstances.

Dated: 21 November 2025

Sean D. Murphy

**Prof. Sean D. Murphy
Chairman**

On behalf of the Court of Arbitration