

**Horacio A. Grigera Naón**

*Doctor en Derecho*

5 February 2026

### **Note of Dissent**

Ref.: DECISION ON THE RESPONDENT’S REQUEST FOR CORRECTION AND INTERPRETATION OF THE FOURTH PARTIAL AWARD ON TRACK III UNDER ARTICLES 35 AND 36 OF THE UNCITRAL ARBITRATION RULES (the “Decision”).

1. For the reasons given below, I am unable to share the views set forth in the Decision by my co-arbitrators.
2. The Fourth Partial Award on Track III, in its relevant part, recites as follows<sup>1</sup>:

*The 15% percentage reduction that shall be applied by the Tribunal does not only account for the existence of deficiencies in the billing records supporting the Claimants’ surviving damages claims. It also incorporates a margin of error intended to account for potential inaccuracies or inconsistencies in the Tribunal’s global assessment of incidental damages. The Tribunal considers this margin necessary in light of the complexity of the evaluations undertaken earlier in this Award and the practical difficulties involved in calculating the final amount of compensation for incidental damages using the Parties’ Damages Models.*

3. In my view, the Respondent’s correction of errors request pursuant to Article 36(1) of the 1976 UNCITRAL Arbitration Rules should in fact be characterized as an attempt to obtain the modification of the Arbitral Tribunal’s conclusion in the Fourth Partial Award on Track III reproduced in para. 2 above.
4. To justify the 15 % reduction, such conclusion expressly refers to the difficulty presented by the arbitral record in carrying out the damage calculation because of the complexity of the exercise and the practical obstacles met in establishing the incidental damages amounts.

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<sup>11</sup> At para. 2237 (v).

5. Thus, the 15% reduction is not premised on any actual or possible calculation of damages amounts but, instead, on a merits allocation of the risk inherent in the difficulty of carrying out the calculations on the basis of the arbitral record. Therefore, such decision on the merits on the allocation of risk may not be attacked by resorting to an application pursuant to Article 36 (1) of the 1976 UNCITRAL Arbitration Rules aimed at correcting calculation or computation errors. For that reason, the Respondent's application premised on this provision is to be rejected.

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Horacio A. Grigera Naón