

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**ENRON NIGERIA POWER HOLDING,
LTD.,**

Plaintiff

v.

**FEDERAL REPUBLIC OF NIGERIA,
Defendant**

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**No. 1:13CV01106
The Honorable
Christopher Cooper**

JUDGMENT

On June 13, 2006, Enron Nigeria Power Holding, Ltd., (“ENPH”) initiated Case No. 14417/EBS/VRO/AGF, *ENPH, Claimant v. (1) Lagos State Government (2) Power Holding Company of Nigeria PLC and (3) Federal Republic of Nigeria (“Nigeria”), Respondents* in the International Court of Arbitration of the International Chamber of Commerce. Therein, ENPH alleged that Nigeria had breached the terms of the December 6, 1999 Power Purchase Agreement (the “Original PPA”) between ENPH and the Respondents.

The arbitration panel found that Nigeria was liable for breaching the Original PPA, Petition to Confirm Arbitral Award, Ex. B (“Final Award”) ¶ 171 [ECF No. 6], and issued its Final Award on November 19, 2012, awarding:

- (1) ENPH damages of \$11,200,000 in damages plus simple interest of 2% above the U.S. prime rate from June 13, 2006, the date of the arbitration’s commencement, until the date of payment (Id. ¶¶ 172, 175 (a));
- (2) ENPH its legal fees of British £410,405 (Id. ¶ 174 b) (i);
- (3) ENPH its costs and expenses of British £307,742 incurred in connection with the arbitration, “and” (Id. ¶¶ 174 b) (ii) and ¶ 175 c);
- (4) ENPH \$870,000 for its payments to the International Commerce Commission towards the

costs of the arbitration. (Id. at ¶ 174 b) (iii) and ¶ 175 c)).

The Court takes judicial notice, under Rule 201 of the Federal Rules of Evidence, of two facts: first, as of the date of the Final Award, the currency exchange rate of British Pounds to American Dollars was £1.00/\$1.591002. Historic Exchange Rates (British Pound) – X-Rates 2012-11-19, <http://www.x-rates.com/historical/?from=GBP&amount=1&date=2012-11-19>; second, as of April 7, 2017 (at the time of preparation of the proposed order), the exchange rate of Pounds to Dollars is £1.00/\$1.23730. Historic Exchange Rates (British Pound) – X-Rates 2017-04-06, <http://www.x-rates.com/historical/?from=GBP&amount=1&date=2017-04-07>.

After Nigeria refused to pay the Final Award, ENPH timely filed a petition seeking confirmation of the award under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (“the New York Convention”), 21 U.S.T. 2517, of which Nigeria is a signatory. An implementing statute—9 U.S.C. § 201—authorizes federal courts to enforce arbitral awards under the New York Convention.

On October 16, 2015, this Court granted Petitioner’s Motion for Order to Confirm Arbitration Award [39] and Respondent appealed that decision to the United States Court of Appeals for the District of Columbia Circuit. On December 27, 2016, the Court of Appeals affirmed the Order to Confirm the Arbitration Award. The clerk of the Court of Appeals subsequently issued a mandate.

This Court expressly incorporates the findings in the October 16, 2015 Memorandum and Order pertaining to the applicable rate of pre-judgment interest to the judgment and the Court takes judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of changes to the prime rate since October 16, 2015. See Money Rates: Market Data Center, Wall St. J http://online.wsj.com/mdc/public/page/2_3020-moneyrate.html (last visited April 4, 2017); Stein v. J.P. Morgan Chase Bank, 279 F. Supp. 2d 286, 290 (S.D.N.Y. 2003) (“The Court takes judicial

notice of the prime rates published in the Wall Street Journal for the dates in question.”).

Accordingly, the Court finds that adding 2% to the prime rates in effect during the relevant period yields the following interest rates applicable to the period prior to entry of judgment:

<i>Begin Date</i>	<i>End Date</i>	<i>Prime Rate + 2%</i>
June 13, 2006	June 28, 2006	10.00
June 29, 2006	September 17, 2007	10.25
September 18, 2007	October 30, 2007	9.75
October 31, 2007	December 10, 2007	9.50
December 11, 2007	January 21, 2008	9.25
January 22, 2008	January 29, 2008	8.50
January 30, 2008	March 17, 2008	8.00
March 18, 2008	April 29, 2008	7.25
April 30, 2008	October 7, 2008	7.00
October 8, 2008	October 28, 2008	6.50
October 29, 2008	December 15, 2008	6.00
December 16, 2008	December 16, 2015	5.25
December 17, 2015	December 14, 2016	5.5
December 15, 2016	March 15, 2017	5.75
March 16, 2017	present	6.0

ENPH's cause of action to confirm the Final Award arises under United States law, and thus the breach day - the date of the issuance of the Final Award - dictates the exchange rate the Court must employ when converting the portion of the award in British Pounds to Dollars.

Furthermore, since the British pound has depreciated by more than 22% since the date of the Final Award, the Court finds that using the breach day rule to determine the applicable exchange rate for converting the British Pound portion of the Final Award into United States currency will more fully make ENPH whole for the delay in Nigeria's compliance with the Final Award. ENPH will receive a judgment that reflects the true value in dollars of the Final Award at the time it was issued instead of the significantly diminished value resulting from Nigeria's success in delaying the entry of final judgment.

Nigeria has declined to abide by the Final Award and promptly pay any of it. The Court finds that Nigeria has deprived ENPH of the use of all funds the arbitration panel awarded in the Final Award, and that ENPH commenced the underlying arbitration and this cause of action in a timely manner. Moreover, the arbitration panel fixed, with certainty, the expenses ENPH had already incurred for legal fees, costs and payments to the International Commerce Commission.

The Original PPA does not specify an interest rate governing the breach of its terms. The Court is thus obligated to employ the rate of simple interest at 6% per annum. D.C. Code § 28-3302 (a). The sum of the prejudgment interest at that rate for the period of November 20, 2012 and April 7, 2017 is \$529,003.52 for the following elements of the Final Award:

- (1) ENPH's legal fees of British £410,405 (Id. ¶ 174 b) (i);
- (2) ENPH's costs and expenses of British £307,742 incurred in connection with the arbitration, "and" (Id. ¶¶ 174 b) (ii) and ¶ 175 c));
- (3) ENPH's payments to the International Commerce Commission towards the costs of

the arbitration of \$870,000. (Id. at ¶ 174 b) (iii) and ¶ 175 c)).

Accordingly, the Court enters judgment against Nigeria and in favor of ENPH as follows:

- (1) \$11,220,000 in damages, plus simple interest of \$7,474,133.84¹;
- (2) \$1,142,573.61, the equivalent of £718,147 as of November 19, 2012, in legal fees and cost and expenses ENPH incurred in connection with the arbitration;
- (3) \$870,000 for costs ENPH paid the International Commerce Commission towards the costs of arbitration; and
- (4) \$529,003.52 in prejudgment interest covering the period of November 20, 2012 thru April 7, 2017.

After entry of judgment, post-judgment interest will accrue on the total judgment of \$21,235,710.67 at the applicable rate set forth in 28 U.S.C. § 1961, until paid.

The PPA provides that “[a]ny costs, fees, or taxes incident to enforcing the award shall be charged against the Party resisting enforcement.” Petition to Confirm Arbitral Award, Ex. A ¶ 23.3.5. ENPH may therefore separately move, under Rule 54(d) of the Federal Rules of Civil Procedure, for attorney’s fees and related expenses incurred due to its petition to confirm the arbitral award, and must do so within 14 days of the entry of this Judgment. If the Court awards attorney’s fees and related expenses in response to such a motion, such an award will also incur interest under the applicable rate set forth in 28 U.S.C. § 1961, until paid.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to counsel of record and to Defendant.

¹ This assumes entry of judgment as of April 7, 2017. If the judgment is entered thereafter, simple pre-judgment interest on the damages will accrue at the rate of \$1,841.09/day.

UNITED STATES DISTRICT COURT JUDGE
ENTERED: April __, 2017

APPROVED AS TO FORM AND SUBSTANCE:

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