UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ENRON NIGERIA POWER HOLDING, LTD., Plaintiff, v. **FEDERAL REPUBLIC OF NIGERIA**, Defendant.	Case No. 1:13-cv-1106 (CRC)

OPINION AND ORDER

Because the Court writes primarily for the benefit of the parties, it will dispense with the customary background facts and legal standards. Petitioner Enron Nigeria Power Holding, Inc. ("ENPH") has moved for an award of attorney's fees and costs incurred to enforce an ICC arbitral award against the Republic of Nigeria. Pl.'s Mot. for Att'y Fees and Nontaxable Expenses 1. Nigeria does not contest the Court's authority to order a fee award, but disputes both the number of hours and the hourly billing rate that ENPH's Houston-based counsel, Kenneth Barrett, has used to calculate the amount of the requested award. Def's Opp'n to Pl.'s Motion for Atty's Fees 4. It also objects to any fees and costs associated with a separate enforcement action in the United Kingdom. Id. at 5. The Court will deny ENPH's motion without prejudice because it has not adequately supported its fee request.

Starting with the applicable billing rate, ENRH's counsel avers that as a sole practitioner with a varied litigation practice, he does not have a standard hourly rate. Barrett Decl. ¶ 9–10. He therefore asks the Court to apply the prevailing rate for complex civil litigation services in Washington, D.C., as reflected by a particular version of the fee matrix that is used to estimate market billing rates for Washington, D.C. litigators at different experience levels. Pl's Memo. of

Law in Supp. of Mot. for Att'y Fees 11; Barrett Decl. ¶ 20. But this case has no unique connection to Washington, D.C. Nor did it have to be filed here, or be litigated by a D.C. attorney. All district courts have subject matter jurisdiction over actions to enforce arbitral award under the New York Convention. 9 U.S.C. § 203. And since circuit precedent indicates that foreign states lack constitutional protections as to personal jurisdiction, there is no reason why this action could not have been brought in Texas. See, e.g., Price v. Socialist People's Libyan Arab Jamahiriya, 294 F.3d 82, 96 (D.C. Cir. 2002). The relevant legal market for fee purposes, then, is not Washington, but rather Houston, Texas, where Mr. Barrett practices. Because ENRH has not submitted any evidence establishing the prevailing market rates for comparable litigation services in Houston, it has not supported the reasonableness of its fee request.

The present record is also murky as to what fees ENRH has actually incurred and/or paid in this matter. One of ENPH's principals, Keith Starks, attests that after agreeing to a $20,000 flat fee, ENRH "agreed to compensate Mr. Barrett for his time . . . at a maximum rate of $850/hour" based on prevailing D.C. billing rates. Sparks Decl. ¶ 4. But there is no indication that Mr. Barrett actually submitted billing invoices—or that ENPH ever submitted payment—at those higher rates or, if payments were made or agreed to, what the precise rates and charges were. Instead, Mr. Barret has submitted after-the-fact annual summaries of the services he rendered, purportedly because all of his contemporaneous billing records were lost. While the time entries on the summaries by and large appear reasonable in light of Nigeria's four-year effort to resist enforcement of the award, it remains unclear to the Court which of Mr. Barrett's fees ENHR obligated itself to pay. And it is ENHR, after all, that is seeking the fee award.

Moving to ENRH's request for fees incurred in the separate UK enforcement action, the Court agrees with Respondent that the English courts (and the London-based ICC) are better positioned to assess both the necessity of the parallel U.K. enforcement action and the reasonableness of the fees ENPH incurred to mount it. The Court also questions whether it even has jurisdiction to order a fee award in an action in a foreign court. The Court therefore declines to award any fees or costs associated with the separate U.K. action.

Finally, the Court reminds the parties of the Supreme Court's admonitions that "[a] request for attorney's fees should not result in a second major litigation[,]" Hensley v. Eckerhart, 461 U.S. 424, 437 (1983), and that "[p]arties . . . should make a conscientious effort, where a fee award is to be made, to resolve any differences," Blum v. Stenson, 465 U.S. 886, 902 n.19 (1984). Consistent with those sentiments, the Court directs the parties to promptly meet and confer in an effort to arrive at a mutually agreeable fee award that is consistent with the above rulings and observations. Only if a stipulated award cannot be reached should Petitioner renew its motion. Any renewed motion shall be filed within 30 days of this Order. The Court expects this to be the last salvo in a battle that has endured far too long.

For the foregoing reasons, it is hereby

ORDERED that [54] Plaintiff's Motion for Attorneys' Fees and Nontaxable Expenses is DENIED without prejudice.

SO ORDERED.

Christopher R. Cooper

CHRISTOPHER R. COOPER
United States District Judge

Date: August 18, 2017