

DC Circ. Denies Quick Win Over Enron Co.'s Nigeria Contract

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By **Jack Newsham**

Law360, New York (February 8, 2016, 6:05 PM ET) -- A Cayman Islands-based Enron affiliate was denied a quick win in its effort to claim a \$12 million arbitrator's award from the Nigerian government in the D.C. Circuit on Monday, with the court's short ruling saying factual questions remained in dispute.

Enron Nigeria Power Holding Ltd. contends that Nigeria had no right to stay a power purchase agreement inked with the subsidiary of Enron Corp. in 1999, and it says the agreement remained in force even after its owner went bankrupt in 2001. ENPH said an [International Chamber of Commerce](#) arbitration panel and a D.C. federal judge were right to hold the country to account.

But Nigeria has said Enron's bankruptcy tainted the government's contract with ENPH and enforcing the award would amount to awarding fraud, violating U.S. public policy and triggering an exception to the New York Convention on arbitral awards. A district court sided with the power company in October, and Nigeria appealed to the D.C. Circuit that same month.

"The merits of the parties' positions are not so clear as to warrant summary action," the D.C. Circuit said. The court referred the case to a merits panel.

David Elesinmogun, an attorney for Nigeria, told Law360 he wasn't surprised by the ruling. Even though an ICC panel awarded the company nearly \$12 million, he said its award didn't make sense because it came despite the panel's own findings that ENPH's ability to deliver on the gas-driven power plants and temporary power barges was in doubt after Enron Corp.'s bankruptcy.

"We really don't see how the courts could actually enforce an arbitral award based on that," he said.

But the Enron affiliate **told the D.C. Circuit** that blame for wrongdoing lay with the defunct Enron Corp., and it said Nigeria had no basis to cancel the contract. ENPH says its primary office is in Houston, but the current relationship between Enron and ENPH isn't clear from court documents.

There "can be no basis for a court to find that ENPH committed a fraud for which it should be denied enforcement of the arbitration award," ENPH wrote in a December brief.

The ICC tribunal conducting the arbitration, which started in 2006, found that Nigeria's early termination of the ENPH contract amounted to a breach of their binding agreement, according to the company's 2013 complaint. The 1999 contract had called for ENPH to design, build, finance and operate gas pipelines and electric plants in the electricity-starved Lagos area, but it was suspended nine days after its execution, according to a copy of the ICC award.

The [Securities and Exchange Commission](#) began investigating Enron in October of 2001, and after revised earnings reports sent shares plunging, the company went bankrupt that December.

An attorney for ENPH did not respond to requests for comment Monday.

Nigeria is represented by David Elesinmogun of Elesinmogun & Egwuatu.

ENPH is represented by Kenneth R. Barrett.

The case is Enron Nigeria Power Holding Ltd. v. Federal Republic of Nigeria, case number [15-7121](#), in the U.S. Court of Appeals for the D.C. Circuit.

--Additional reporting by Adam Sege. Editing by Jeremy Barker.

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