

LITIGATION ALERT:
**NEW FEDERAL HIGH COURT PRACTICE
DIRECTIONS FOR NESI DISPUTES**

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INTRODUCTION

To facilitate the efficient hearing and determination of Nigerian Electricity Supply Industry (NESI) disputes, the Chief Judge of the Federal High Court of Nigeria, Hon. Justice John Tsoho, on 23 January 2026, issued the Federal High Court (Nigerian Electricity Supply Industry) Practice Directions 2026, pursuant to the powers conferred under Order 57 Rule 3 of the Federal High Court of Nigeria (Civil Procedure) Rules 2019 (“the Federal High Court Rules”). The new Practice Directions, which have since come into effect, establish a specialised procedural framework for electricity sector disputes and enhance the efficiency of dispute resolution within the sector, including how litigants address the technical peculiarities of power sector litigation.

While the Practice Directions make sector-specific provisions, Paragraph 1 of the Practice Directions provides that where there is any lacuna in the Practice Directions, recourse shall be made to the Federal High Court Rules. This newsletter highlights some of the key provisions, explains their scope, and assesses their practical implications for disputes and stakeholders within NESI. However, it is not intended to be exhaustive; practitioners are advised to consult the complete Practice Directions for a full appreciation of their scope and application.

APPRAISAL OF SOME KEY PROVISIONS UNDER THE PRACTICE DIRECTIONS

Some of the key provisions of the Practice Directions are:

i. Case Management

Paragraph 3 of the Practice Directions mandates the Federal High Court (“the Court”) to actively manage NESI cases by fixing timetables, identifying key issues at an early stage, and ensuring the expedited hearing of matters, among other measures. The Court is further empowered to act on its own initiative by verifying that parties have exhausted any alternative dispute resolution process provided in their contracts before instituting proceedings before the Court. The Practice Directions also provide for a fast-track regime that applies when a NESI suit is first called before the Court. Most importantly, the entire framework is underpinned by an enforcement mechanism that allows the Court to specify conditions, attach requirements, and set out consequences for non-compliance.

ii. Mandatory Accompanying Documents

The Practice Directions also stipulate that, to commence a NESI suit, the party instituting the action must support their originating processes with a pre-action affidavit deposing to the fact that they have exhausted the ADR mechanism provided for in their contract or mandated by the Nigerian Electricity Regulatory Commission (NERC). In the same vein, Paragraph 4 of the Practice Directions provides that a party instituting a NESI action must attach a Technical

Statement (where applicable) detailing technical and industry-specific terms or complex processes relied upon by the party. This gives the Court a foundational understanding of the technical context before proceedings begin, reducing the risk of misapplying the law to facts the Court might otherwise misunderstand. This requirement, which is absent under the Federal High Court Rules, underscores the specialised nature of NESI disputes.

iii. Register for NESI claims

This is a novel provision that mandates the Registry of the Court to maintain a dedicated NESI Register containing details and other relevant information relating to NESI suits. The information that will be contained in the Register includes the parties, type of claim, judicial division, and a short statement of the issues or facts of the case. The Register creates a centralised, official record of every NESI-related suit across all Judicial Divisions of the Court. This ensures accurate tracking and monitoring of case files, including instances where related cases are filed in multiple divisions of the Court. Notably, the Practice Directions do not address whether the Register will be publicly accessible or restricted to the Court and the parties.

iv. Visit to Locus in Quo

Where the justice of a matter so demands, Paragraph 10 of the Practice Directions provides that, in all NESI cases, the Court may visit any place, person, or thing connected with the case and is empowered to adjourn the Court to that location to continue the hearing of the matter. This provision is significant as it facilitates judicial inspection in NESI suits, a particularly important measure given the unique nature of disputes involving critical infrastructure.

GAPS AND EMERGING CHALLENGES IN THE PRACTICE DIRECTIONS

i. The Exhaustion of NERC’s Dispute Resolution Process: An Essential but Unclear Requirement

The Practice Directions mandate the exhaustion of the ADR mechanism as a necessary step before a NESI suit can be instituted at the Federal High Court. Paragraph 4 of the Practice Directions requires a claimant to file a pre-action affidavit averring that they have exhausted the alternative dispute resolution mechanism provided in the parties’ contract or, alternatively, the mechanism made mandatory by the NERC.

Similarly, Paragraph 3(3)(a) empowers the Court, as part of its case management function, to ascertain that the parties have availed themselves of the prescribed dispute resolution process, as provided in their respective contracts, before instituting an action before the Court. However, the Practice Directions do not elaborate on, or provide any factors for determining, when the NERC dispute resolution process may be considered “exhausted.”

This omission is significant. Since exhaustion is a baseline requirement, the absence of a clearly defined standard makes its application problematic in practice. Respondents may routinely raise preliminary objections that a claimant has not properly exhausted the NERC dispute resolution process, leaving the Court without a clear yardstick by which the requirement can be assessed.

In light of this uncertainty, operators should exercise caution by thoroughly documenting the steps taken under the NERC dispute resolution procedure and, wherever possible, obtaining written confirmations of both outcomes and non-responses. Additionally, parties may go a step further by incorporating clear timelines and defining what constitutes exhaustion in the dispute resolution clauses of their contracts to minimise preliminary procedural disputes.

ii. **The Definition and Jurisdictional Scope of “NESI Suits”**

The Practice Directions’ procedural framework is limited only to “NESI suits”. Thus, the scope of the framework therefore turns entirely on what qualifies as a NESI suit. However, the Practice Directions fail to define the term.

The only guidance lies in the definition of “NESI” itself, meaning the Nigerian Electricity Supply Industry, and in the definition of “stakeholders,” which includes agencies established under the Electricity Act 2023; various levels of government; the generation, transmission, system, and market operators; trading, supply, and distribution companies; customers; and other licensees of the NERC.

By inference, one may conclude that a NESI suit is a dispute originating from or related to activities of the Nigerian Electricity Supply Industry. Nonetheless, inference is different from a definition. The absence of a clear definition creates jurisdictional ambiguity. It remains uncertain whether the framework applies solely to disputes between licensees or also extends to consumer complaints against distribution companies, regulatory challenges to tariff orders, employment disputes within sector entities, and contractual disputes between sector participants and non-sector counterparties.

Indeed, this ambiguity is likely to lead to frequent jurisdictional objections. Parties may argue either that a dispute falls outside the NESI framework, so that the Practice Directions do not apply, or that it falls within it, in order to invoke the requirement to exhaust the regulatory ADR mechanism. Until further judicial guidance is issued, parties should prudently treat disputes whose subject matter has a material connection to the Electricity Supply Industry as NESI suits and comply with the Practice Directions accordingly.

NEXT STEP FOR STAKEHOLDERS

The Practice Directions raise the compliance threshold for commencing and defending NESI disputes. Stakeholders should promptly align their internal processes with the new framework.

Regarding documentation, operators should treat technical records and correspondence as priority litigation assets. The Court's power to order technical statements and conduct on-site visits makes organised, up-to-date, and accessible technical documentation essential. Existing data management practices should be reviewed with this in mind.

For contracts, dispute resolution clauses in existing agreements should be audited to ensure they clearly define the steps and timelines that constitute exhaustion of the ADR process. Where they fall

short, amendments should be considered. For non-contractual disputes, contractual fixes will not be sufficient. Further regulatory intervention will likely be needed to provide clarity on what exhaustion means in practice.

On the scope of the framework, operators and their counsel should actively test which disputes fall within the Practice Directions by seeking early court determinations on the issue. As a prudent interim measure, any dispute whose subject matter has a material connection to the Electricity Supply Industry should be treated as a NESI suit, with compliance ensured accordingly.

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