

# Review of the Federal High Court (Nigerian Electricity Supply Industry) Practice Directions 2026

OALP Power Newsletter

## INTRODUCTION

Over the years, there have been longstanding concerns regarding the effectiveness of dispute resolution mechanisms within the Nigerian Electricity Supply Industry (NESI). These concerns pose a risk to the continued stability and growth of NESI, a sector of national importance that has attracted—and continues to attract—substantial foreign and local investment, as well as significant public expenditure. Against this backdrop, the Chief Judge (CJ) of the Federal High Court (FHC or the **Court**) on 23 January 2026 issued the Federal High Court (Nigerian Electricity Supply Industry) Practice Directions, 2026 (the **Practice Directions**), pursuant to the powers conferred on the CJ under the Federal High Court (Civil Procedure) Rules 2019 (the **FHC Rules**).

The introduction of the Practice Directions builds on recent legislative and institutional efforts to reform how NESI-related disputes are resolved. Notably, the Electricity Act 2023 significantly restructured the sector's dispute resolution framework by emphasizing regulatory adjudication by the Nigerian Electricity Regulatory Commission (NERC or the **Commission**) and affirming the primacy of Alternative Dispute Resolution (ADR) mechanisms. Complementing these legislative reforms, NERC has partnered with the National Judicial Institute to train judicial officers, including those of the FHC, which hears a substantial proportion of NESI-related

disputes, so as to enhance judicial capacity on effective dispute resolution in the sector.<sup>1</sup>

Within this context, the Practice Directions both reinforce existing provisions of the FHC Rules and introduce innovative procedures aimed at ensuring the efficient and expeditious hearing and determination of NESI-related suits before the Federal High Court. This newsletter reviews the Practice Directions by first examining the relationship of the Practice Directions with the FHC Rules. It further analyses the key provisions of the Practice Directions and assesses their anticipated positive impact on dispute resolution in NESI and the sector more broadly. It also highlights potential gaps and implementation challenges and concludes with recommendations for ensuring that the Practice Directions realize the desired effects.

## RELATIONSHIP WITH THE FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES 2019

The Practice Directions were enacted further to the powers conferred upon the Chief Judge of the Federal High Court by Order 57, Rule 3 of the FHC Rules.<sup>2</sup> They are sector-specific and are made further to the FHC Rules. In sum, the Practice Directions are subject to the prescriptions of the FHC Rules where a lacuna exists.<sup>3</sup>

1. NERC, 'NERC strengthens judicial capacity on electricity sector' (NERC, 28 April 2025) <<https://nerc.gov.ng/media/nerc-strengthens-judicial-officers-capacity-on-electricity-sector/>> Accessed 3 February 2026

2. Federal High Court (Nigerian Electricity Supply Industry) Practice Directions 2026, Preamble

3. *Ibid*, Order 2

## ANALYSIS OF THE KEY PROVISIONS OF THE PRACTICE DIRECTIONS

### Case Management

The Practice Directions make provisions for case management under Order 3.<sup>4</sup> Order 3(2)(a) prescribes active case management and ensures that matters and disputes between licensees are heard by the Commission at first instance. This provision distances the Court from the parties by introducing a mandatory pre-action step, requiring that disputes within the NESI be first submitted to the Commission for resolution, and precluding parties from approaching the Court in the first instance.

Further, by Order 3(3)(a), the Court may, on its own motion, exercise its case management powers to ensure that parties have explored the dispute resolution mechanisms stipulated in their contracts before commencing an action. This underscores the importance of careful contract drafting and reinforces the Court's clear position that parties are expected to exhaust agreed out of court dispute resolution processes prior to invoking its jurisdiction. The overarching objective of the Practice Directions is the expeditious determination of NESI matters. To this end, Order 5(b) mandates that NESI suits be heard on a fast track basis.

### Commencement of Action, Accompanying Documents, and Service of Processes

While the Practice Directions are less granular than the FHC Rules, they introduce critical prescriptions that practitioners must navigate to ensure their claims are heard. Consistent with the theme of prioritizing out-of-court resolution, Order 4 of the Practice Directions<sup>5</sup> introduces mandatory filing requirements. Plaintiffs must now accompany their originating processes with:



a Pre-action Affidavit stating that the Plaintiff has exhausted all Alternative Dispute Resolution (ADR) mechanisms provided for in their contract or mandated by the Commission; and



a Technical Statement, where necessary, detailing industry-specific terms, technical usages, or complex processes relied upon.

Notably, the Practice Directions remain silent on the specific

criteria for when a technical statement is deemed "necessary." This lack of definition may create future challenges, as Plaintiffs must guess the level of technicality required to satisfy the Court, potentially leading to preliminary disputes over the sufficiency of the filing.

Order 6(1) of the Practice Direction<sup>6</sup> introduces a subtle but significant deviation from the FHC Rules regarding service on corporate entities. While the FHC Rules<sup>7</sup> specify service on a "director, secretary, or other principal officer," the Practice Direction expands this to include any "senior or responsible officer or representative in the jurisdiction." While Order 2 of the Practice Directions ensures that the FHC Rules fill any procedural lacunae, the deliberate choice of broader language suggests an intent to make service more accessible and less prone to technical "evasion" by corporate stakeholders.

One of the more innovative provisions is Order 6(6), which provides that, in contract-based claims, service effected in accordance with any method agreed by the parties constitutes good and sufficient service. This provision, which does not appear in the general FHC Rules, elevates the principle of freedom of contract into the procedural realm.

### Register of NESI Claims

The Practice Directions mandate the maintenance of a dedicated NESI Register by the Registry of the Federal High Court, capturing essential details of all NESI-related suits, including parties, nature of claim, summary of issues and judicial division.<sup>8</sup> Policy-wise, while registries traditionally maintain cause lists and suit registers, the creation of a specialized NESI Register is a notable procedural innovation. It also reflects a deliberate attempt to institutionalize sector specific case tracking within the Federal High Court system, rather than treating NESI disputes as generic commercial claims.

### Interlocutory Applications

The Practice Directions streamline interlocutory applications by prescribing provisions for the filing of motions, supporting affidavit and written addresses.<sup>9</sup> It also sets out a strict timeline of seven days from the date of service for the filing of responses to interlocutory applications.<sup>10</sup> The framework emphasizes prompt exchange of processes and largely mirrors existing Federal High Court practice.<sup>11</sup>

4. *Ibid*, Order 3

5. *Ibid*, Order 4

6. *Ibid*, Order 6(1)

7. *Federal High Court Civil Procedure Rules 2019*, Order 6, Rule 8

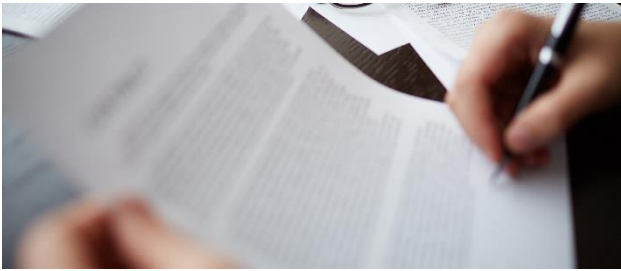
8. *Federal High Court (Nigerian Electricity Supply Industry) Practice*

*Directions 2026*, Order 7

9. *Ibid*, Order 9 (1)(2)

10. *Ibid*, Order 9 (3)

11. *Federal High Court Civil Procedure Rules 2019*, Order 26 (4)



Its inclusion within a sector-specific Practice Direction nevertheless reinforces the Court's intention to curb the proliferation of interlocutory skirmishes in NESI matters. In the context of NESI disputes, interlocutory delays often have direct commercial and operational consequences, including stalled projects, regulatory uncertainty and disrupted cash flows. The tighter procedural discipline imposed by the Practice Directions encourages early crystallisation of issues and discourages tactical applications designed to delay proceedings.

#### Visit to Locus in Quo and Evidentiary Considerations

The Practice Directions expressly empower the Court to visit any place, person or thing connected with a NESI dispute where this serves the interest of justice.<sup>12</sup> The Court retains control over the process and may issue directions to preserve procedural integrity during such visits.<sup>13</sup> From a pragmatic standpoint, although visits to locus in quo are recognised in general civil procedure in accordance with the provisions of the Evidence Act 2011 (as amended), their express inclusion in the NESI Practice Directions reflects an appreciation of the technical and physical nature of electricity infrastructure disputes.

This provision acknowledges that documentary evidence alone may be insufficient in resolving certain NESI claims as electricity disputes frequently involve transmission infrastructure, generation facilities, metering systems and network assets whose condition, configuration or operation may be central to the dispute.

#### Written Submissions and Conduct of Proceedings

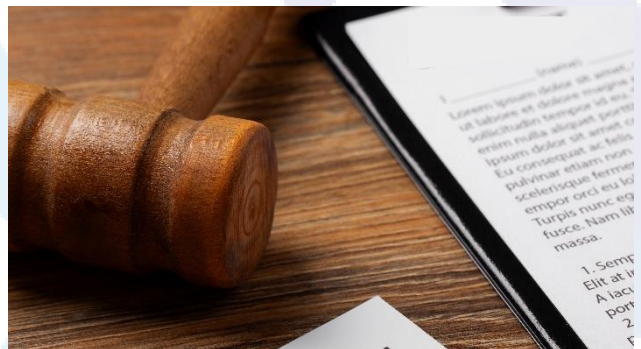
The Practice Directions elevate written submissions as the primary mode of advocacy by limiting oral adumbration except where specifically requested by the Court.<sup>14</sup> Further, filed submissions are deemed adopted and may be relied upon without further argument.<sup>15</sup> We note that while written addresses are standard in Federal High Court practice,<sup>16</sup> the

deeming provision and restriction on oral amplification mark a deliberate procedural approach which reflects the Court's commitment to efficiency in NESI matters. In practice, NESI disputes often turn on regulatory interpretation, contractual frameworks and technical evidence. As such, the emphasis on written submissions encourages precision, coherence and technical clarity in legal argument.

#### Appeals from Decisions of the Nigerian Electricity Regulatory Commission

The Practice Directions establish a structured appellate framework for challenges to decisions of NERC and other NESI regulators.<sup>17</sup> The provision expressly complements section 51(3) of the Electricity Act 2023, which provides that any person dissatisfied with the decision of the Commission shall within thirty (30) days from the date of the final decision of the Commission, file an appeal to the Federal High Court. The Practice Directions go further to operationalise section 51(3) by prescribing detailed procedural requirements for such appeals. These include the filing of an originating motion accompanied by an affidavit setting out the facts relied upon, copies of exhibits including a certified copy of the Commission's decision, and a written address.<sup>18</sup>

The Practice Directions also set a shorter timeframe of fourteen (14) days for compilation and transmission of appellate records, relative to similar provisions in appeals from superior courts to the Court of Appeal.<sup>19</sup> In general, these provisions represent a notable procedural innovation that codifies sector-specific appellate procedure beyond general administrative appeals. They practically balance regulatory primacy with judicial oversight, giving the Court authority to receive further evidence, remit matters for rehearing by the Commission, or allow appeals where substantial wrong or miscarriage of justice is established.



12. Federal High Court (Nigerian Electricity Supply Industry) Practice Directions 2026, Order 10 (1)

13. *ibid*, Order 10 (3)

14. *Ibid*, Order 11 (1)

15. *Ibid*, Order 11 (2)

16. Federal High Court Civil Procedure Rules 2019, Order 22

17. Order 12 (1), Federal High Court (Nigerian Electricity Supply Industry) Practice Directions 2026

18. *Ibid*, Order 12 (2)

19. See Court of Appeal Rules 2021, Order 8 which provides for a timeline of sixty (60) days for the compilation, service and transmission of the records of appeal to the Court of Appeal.

### Costs, Compensation, and Damages

One of the most interesting prescriptions of Practice Directions is Order 15<sup>20</sup>, which introduces mechanisms to ensure financial accountability and discourage bad-faith litigation within the power sector. Order 15(1)<sup>21</sup> empowers the court to award "reasonable costs" designed to discourage the filing of frivolous suits or the seeking of unnecessary adjournments that stall industry progress. Order 15(2)<sup>22</sup> is of much interest, prescribing an automatic consideration of costs at the conclusion of any NESI-related suit.

Further, 15(3)<sup>23</sup> stretches the beneficiaries of costs to include consumers and stakeholders, as the Court can order a defendant to pay compensation to any person who has suffered loss or injury as a result of the defendant's acts. This order can be made regardless of whether a fine or other punishment is also imposed.

Holistically, the approach to costs in the Practice Directions dissuades any frivolous suit as the party whose judgment is entered against risks financial penalties from all angles. Parties engaged in a NESI dispute are encouraged more than ever to attempt to resolve their dispute, out of court.

### POSITIVE IMPACT OF THE PRACTICE DIRECTIONS ON THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY

#### Alignment of judicial process with commercial realities in NESI

A common complaint levelled against the Nigerian judicial system is the lack of a commercial approach to the management and resolution of disputes. Over the years, this has decreased the level of confidence of investors in the judicial process. The Practice Directions introduce innovative provisions to ensure that FHC procedures and the decisions reached by FHC judges align with commercial realities, in a way that demonstrates an understanding of the commercial and technical issues at play. One such innovative provision is the requirement for a technical statement to accompany originating processes. The technical statement serves as a means for judges to appreciate NESI-specific terms and concepts used in the proceedings.

Another notable provision is that relating to a visit to the locus in quo. Although this already exists under the Evidence Act (as amended), its specific mention in the Practice Directions enables the Court to take due cognizance of the relevance of a visit to the locus in quo in appropriate cases.

The ability of the Court to directly observe such assets enhances evidentiary clarity, reduces reliance on competing expert narratives, and supports more informed and commercially realistic adjudication. In addition, the Practice Directions seek to preserve confidence in the technical decisions and processes of regulators. In this regard, the guardrails provided in paragraph 12(2) of the Practice Directions prevent a situation in which an appellant challenging a decision of the Commission does not demonstrate, by affidavit, clear grounds justifying judicial intervention. This ensures that the judiciary intervenes only in limited circumstances and not where a regulator has made an informed commercial decision.

#### Increased compliance with Arbitration and ADR mechanisms in NESI

Most contractual arrangements in NESI typically provide for a multi-layered dispute resolution framework, such that disputes are first to be resolved through mutual negotiation or expert determination. Failing this, parties may resort to mediation or arbitration, which serves as the final dispute resolution forum for the majority of industry contracts. Given the highly technical and capital-intensive nature of the sector, arbitration offers the advantage of allowing parties to appoint arbitrators with deep industry expertise, thereby ensuring a more informed and sector-specific resolution.

However, in practice, it has been observed that parties sometimes approach the courts directly for the resolution of disputes in contravention of the arbitral agreements contained in their contracts. In other instances, following the conclusion of arbitral proceedings, an aggrieved party may still proceed to institute court proceedings challenging the arbitral award.

The Practice Directions seek to ameliorate this situation by providing that the first call of a NESI suit shall lead to a determination of the timeline for filing court processes and for hearing the case on a fast-track basis. In addition, the requirement for a pre-action affidavit places the onus on the party instituting the suit to demonstrate that it has explored all other ADR mechanisms provided under the relevant contracts or by the Commission. This, in turn, reinforces the sanctity of ADR mechanisms in settling disputes in NESI and thus reducing the filing of frivolous suits that are in breach of the provisions of the Electricity Act and arbitration agreements in contracts.

20. *Ibid*, Order 15  
21. *Ibid*, Order 15(1)

22. *Ibid*, Order 15(2)  
23. *Ibid*, Order 15(3)

### Improved Dispute Resolution Timelines

With the introduction of these Practice Directions, it is anticipated that bottlenecks which have hitherto served as obstacles to the swift resolution of disputes in the NESI will be removed. The Federal High Court is mandated under the Practice Directions to exercise a wide range of functions with respect to the management of disputes. While some of these functions—such as encouraging settlement out of court, the power to determine issues, and the summary disposal of issues—already exist under the current FHC Rules, the Practice Directions reinforce the judiciary’s commitment to the swift resolution of disputes. In addition, the emphasis on written submissions reduces hearing time and procedural congestion, allowing courts to resolve complex sector disputes more expeditiously. For industry actors, this enhances certainty and reduces the cost of prolonged courtroom engagement.

Notably, these Practice Directions have been introduced at a crucial time, as the NESI continues to undergo structural and market reforms. As the sector witnesses increased divestments and the emergence of new projects, the Practice Directions provide a streamlined framework for the expeditious resolution of NESI-related disputes. In turn, this is expected to bolster the confidence of prospective and foreign investors in the administration of justice in Nigeria, thereby enhancing the protection of capital invested in the NESI.

### Effective Case Management and Administration of Justice

The Practice Directions also facilitate the smooth administration of justice processes in NESI through the case management provisions. Case management is paramount to the swift adjudication of matters before the court, decongesting the cause list of the court, ensuring the matter is properly presented, and that parties exhaust out-of-court dispute resolution options. For instance, the requirement for the Registrar of the Federal High Court to maintain a database of NESI suits is expected to enhance effective planning and case management. Such data will be instrumental to regulators, including the Nigerian Electricity Regulatory Commission, in identifying recurring contentious issues affecting investors, customers, and licensees within the industry. Regulators can, in turn, leverage this data to design appropriate regulatory interventions or, where necessary, escalate such issues to the legislature or the executive to drive legal and policy reforms.

For NESI stakeholders, the register introduces transparency, predictability and institutional memory into electricity sector litigation. Further, it enables the Court to identify recurring regulatory and contractual issues, manage related suits coherently and reduce inconsistent outcomes. In addition, the Practice Directions reflect a philosophy of substantial justice in the resolution of NESI-related suits before the FHC. By expressly providing that defective court documents will not ordinarily delay proceedings unless the defect is one of substance, the Practice Directions assure litigants and investors that critical and high-stakes matters will not be delayed or frustrated through undue reliance on technicalities.



### IMPLEMENTATION CHALLENGES AND GAPS WITH THE PRACTICE DIRECTIONS

Although the Practice Directions clearly intend to recalibrate the resolution of NESI-related disputes, the practical success will hinge on how effectively the FHC, litigants, counsel, and relevant institutions adapt the provisions. Some structural and capacity-based challenges, some of which are below could influence the efficacy of the Practice Directions.

#### Lack of Clarity as to the Scope of NESI Suits

Perhaps, the biggest gap with respect to the Practice Directions is that it fails to provide some guidance as to the scope of suits that can be properly called NESI Suits. It is unclear whether the Practice Directions apply to all forms of suits even if such relates to the internal company affairs of licensees or any other tangential matters such as the environment. We envisage that this may be a significant point of contention amongst litigants and counsel and parties may resort to preliminary objections challenging the propriety of commencing some suits in contravention of the Practice Directions. In this regard, judicial interpretation may be needed to adequately circumscribe the scope of NESI suits that will be covered by the Practice Directions.

**Limited impact of the Practice Directions due to Decentralisation**

Whilst the objective of the Practice Directions is to enhance the dispute resolution processes in NESI, we envisage that the recent constitutional amendment and decentralization reforms may make the Practice Directions limited in its reach and impact. This is because suits in states with their own electricity markets will be entertained by State High Courts. Accordingly, the FHC jurisdiction over NESI suits as contemplated under the Practice Directions will be limited to states that have yet to establish their electricity markets, Federal Capital Territory (FCT) and activities over national grid and interstate electricity activities. Thus, to ensure that the reforms introduced by the Practice Directions have the desired effect across the whole of NESI, NERC and federal judiciary stakeholders must collaborate with state electricity regulatory commissions and state judiciaries to domesticate these Practice Directions.



**Capacity of courts to manage technically complex NESI disputes**

The NESI is a highly technical sector, with disputes frequently hinging on engineering standards, grid stability considerations, metering infrastructure, and complex electricity regulatory frameworks. While the Practice Directions presuppose that judges can competently analyse and resolve such specialised issues, the reality across judicial divisions reflects varying levels of technical proficiency. Many judges have limited exposure to the commercial, engineering, and regulatory concepts that underpin electricity-sector disputes. As a result, there is a risk that the innovative features of the Practice Directions such as the use of technical statements, and the requirement to review NERC's decisions on appeal may not be applied with the necessary degree of technical expertise.

Furthermore, the increased expectation that courts will evaluate technical information on a fast-track basis could further undermine the technical excellence of the judgment.

Consequently, without sustained sector-specific judicial education, the desired gains in efficiency may not materialise. To address this technicality gap, in the short-term, it is necessary to further enhance the capacity building trainings for judges through initiatives such as the incorporation of electricity-sector modules into a continuing judicial education programme and possibly a judicial reference guide specifically tailored to NESI-related disputes. In the long term and as NESI develops, it may become essential to establish specialist courts or designate dedicated NESI judges to address such disputes.

**Infrastructure and technology readiness**

The Practice Directions assume that the Federal High Court possesses the administrative and digital capacity to support accelerated timelines, sector-specific record-keeping, and efficient document management. In reality, many divisions continue to operate under significant constraints, including limited digitization, delays in accessing physical case files, unreliable power supply, and inconsistent internet connectivity. Adoption of e-filing and case-tracking systems also varies widely across divisions.

As an example, the creation of a dedicated NESI Register demands accurate and continuous data entry, tasks that overstretched and largely manual registries may struggle to execute reliably. Likewise, strict filing and response timelines, such as the seven-day period for interlocutory processes, will only be feasible if registries can swiftly process filings, assign suit numbers, and update case movements. Where registry operations lag, parties may be unable to meet procedural deadlines. To bridge these infrastructural gaps and ensure the effective implementation of the Practice Directions, the Federal High Court would need to undertake deliberate and coordinated system upgrades.

**Consistency of application across judicial divisions**

The Practice Directions are intended to standardise procedure. However, the Federal High Court's multi-divisional structure means that uniformity is often difficult to achieve. Disparities may emerge in application of the P Ds. Without central oversight or harmonisation mechanisms, divergent judicial approaches could inadvertently recreate the very inconsistencies the Practice Directions seek to eliminate. This risk is particularly acute in divisions with heavy caseloads or divisions unfamiliar with NESI disputes.



To promote uniform application of the Practice Directions and minimise procedural fragmentation across divisions, several measures would be beneficial. These include issuing regular judicial circulars to clarify ambiguities in the adjudication of NESI disputes; convening periodic review meetings among judges assigned to NESI matters to foster interpretive alignment; designating a "lead division" such as Abuja or Lagos to provide centralised guidance on recurring procedural and substantive issues; and instituting continuous monitoring by the National Judicial Council (NJC) to track compliance and ensure consistency in judicial practice nationwide.

## CONCLUSION

The Practice Directions, which generally have the force of law,<sup>24</sup> represent needed reform towards strengthening the resolution of electricity sector disputes. By enhancing case management tools and creating sector specific mechanisms such as the NESI Register, the Practice Directions demonstrate a clear judicial commitment to foster greater efficiency and developing strong investor confidence in the judicial handling of NESI related disputes.

Furthermore, the extent to which these objectives will be realised depends largely on the capacity of the courts, counsel, and institutional stakeholders to effectively implement the new procedures. Existing gaps present obstacles that must be proactively addressed. Strengthening judicial training, upgrading court infrastructure, harmonising interpretation across divisions, and enhancing stakeholder sensitisation will be essential to achieving the transformative goals of the Practice Directions. Ultimately, if these challenges are met, the Practice Directions stands relevant to creating a more efficient, commercially responsive, and sector sensitive judicial framework capable of supporting the sustainable development of the Nigerian Electricity Sector.

24. *Edevie v. Orohwedor* [2023] 8 NWLR (Pt. 1886) 219 at 278, para E

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