

26 MAY 2026

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Pathways to Resolving Disputes in Nigeria’s Electricity Sector

Introduction

Disputes are an inevitable feature of commercial endeavours, and the electricity sector is no exception. However, resolving disputes in this sector is not as straightforward as simply approaching the courts. The Electricity Act 2023 (the “Act”) establishes a defined, multi-layered protocol for resolving disputes within the sector. Although the evolving regulatory structure of the sector accommodates both federal and state participation in electricity regulation, this article focuses on the dispute resolution mechanisms prescribed in the Act, which continue to apply to the Federal Capital Territory (Abuja), States that have not yet established their own electricity markets, inter-state electricity operations, and operations that rely on any part of the national grid.

This article examines the structured and multi-layered dispute resolution system under the Act, with a view to providing practical guidance on the procedural pathways required for effective resolution. Understanding how these layers interact is crucial not only for industry players, but also for investors, consumers, and other stakeholders.

Dispute Resolution Framework Under the Act

Dispute resolution under the Act proceeds through a structured legal framework comprising three principal pathways: regulatory processes, contractual mechanisms, and judicial intervention. These pathways reflect the statutory intention that disputes arising within the sector be addressed internally before recourse may be had to the courts as a last resort.¹

¹ A number of States that have established their electricity markets have adopted same or slightly modified approach to dispute resolution within the sector in their own states.

Each of these pathways is examined in turn below.

Pathway 1 – Regulatory Processes Administered by NERC

The first pathway is the regulatory framework administered by NERC. Certain disputes arising within the sector must, in the first instance, be addressed within this framework, which is designed to secure efficient, expert-led resolution grounded in sector-specific technical and regulatory competence.

The Act and NERC's Business Rules

Under the Act and the Business Rules 2006, NERC has broad enforcement powers to issue corrective orders, impose administrative penalties, and prescribe licence conditions to secure compliance². In practice, this has included the imposition of substantial fines on electricity distribution companies (“DisCos”) for regulatory breaches, and the ordering of credit adjustments to customers in cases of overbilling.³

The Act further confers on NERC the authority to receive complaints, conduct investigations and hearings, and determine disputes within its jurisdiction involving consumers, licensees, and other stakeholders⁴. NERC accordingly exercises quasi-judicial powers and may issue binding decisions, directives, and compliance orders.

For consumer-related grievances, particularly those involving NERC-regulated DisCos, the statutory process is tiered. Complaints must initially be lodged with the relevant DisCo through its Customer Complaints Unit. Where a complaint remains unresolved, the matter may be escalated to the NERC Forum Office, which serves as an independent review body. Where the complainant is dissatisfied with the decision of the NERC Forum Office, that decision may be further appealed to NERC itself.⁵

Where appropriate, NERC issues binding orders, directives, or penalties in respect of such appeals. Aggrieved parties remain entitled to challenge NERC’s determinations before the courts by way of further appeal, and may seek interim relief—such as injunctive orders or a stay of execution—pending resolution of the substantive issues.⁶

The system is designed to ensure that complaints are handled promptly by bodies with the technical and operational expertise to understand the nuances of the electricity supply value chain. These steps generally constitute conditions precedent to litigation and must be exhausted before recourse is had to the courts.⁷

Market Rules and Grid Code

In addition to the Act, sector-specific instruments such as the NERC Market Rules for the Transitional and Medium Term Stages of the Nigerian Electricity Supply Industry (December 2014) (the “**Market Rules**”) and the NERC Grid Code for the Nigeria Electricity Transmission System (Version 3) (the “**Grid**”

² See sections 33–34, 47(1), 51 of the Electricity Act, 2023; and Clause 32 of the NERC Business Rules, 2006.

³ In 2025, the NERC sanctioned eight (8) DisCos for failing to comply with the monthly energy caps for unmetered customers between July and September 2024. The monetary sanction was over 628 million Naira. The NERC also issued a directive to the DisCos to issue a credit adjustment to affected customers of the overbilling by 15 May 2025. See the NERC’s release here: <https://nerc.gov.ng/media/nerc-sanctions-8-discos-for-non-compliance-with-estimated-bill-caps/>

⁴ Section 33 of the Electricity Act, 2023 establishes the functions of NERC, including regulation of the electricity market and enforcement of compliance; section 34 confers powers on NERC to issue orders, rules and directives for the effective regulation of the sector; section 47(1) empowers NERC to conduct hearings, receive complaints, and adjudicate disputes (quasi-judicial function); and section 51 provides for rehearing and appeals, reinforcing NERC’s role as the first-instance decision-maker.

⁵ See NERC, Complaints and Redress Procedure; and Customer Complaints Handling Standards & Procedures. Available at: <https://nerc.gov.ng/faq/complaints-and-redress-procedure/>

⁶ See Section 51(3) of the Electricity Act 2023.

⁷ See Suit No: FHC/L/CS/490/2024: Folorunsho Bamidele & 7 Ors v. The Attorney General of the Federation & Ors.

Code") establish dedicated dispute resolution procedures for licensees and market participants, including generators, the transmission service provider, system and market operators, distribution companies, and eligible customers. These instruments address operational, settlement, and technical disputes within the market, providing a structured first layer of resolution without displacing formal dispute resolution mechanisms. Where disputes arise from obligations created under these instruments, the prescribed procedures apply as a matter of regulatory compliance.

Central to this framework is the Dispute Resolution Counsellor appointed by NERC to administer dispute resolution under the Market Rules and the Grid Code, including the constitution of panels to mediate, conciliate, arbitrate, or otherwise determine disputes.

For disputes involving the operation of the national grid, the Grid Code typically requires referral to an expert for determination. Any issue that remains unresolved is thereafter addressed under the Market Rules framework.⁸

The requirement to invoke NERC's jurisdiction in regulatory disputes is grounded in both the statutory allocation of oversight under the Act and the doctrine of exhaustion of administrative remedies. Where a dispute raises regulatory issues—such as tariff determination (particularly for tariffs regulated by the relevant NERC multi-year tariff order), licence compliance, or adherence to market rules—NERC's jurisdiction is primary and must ordinarily be invoked before recourse to arbitral or judicial fora. By contrast, disputes that are purely contractual in nature remain subject to the dispute resolution mechanisms agreed between the parties.

Pathway 2 – Contractual Dispute Resolution Mechanisms

The second pathway is rooted in the contractual arrangements that govern relationships across the electricity value chain. The sector operates through a network of agreements—including power purchase agreements, transmission use of system agreements, vesting contracts, connection agreements, and ancillary services agreements—each of which typically contains detailed dispute resolution provisions.

These contractual mechanisms govern disputes arising from the specific rights and obligations assumed by parties, including payment defaults, performance failures, and questions of contractual interpretation. In such cases, parties are bound to follow the agreed dispute resolution procedures, which commonly adopt a multi-tiered structure, progressing from negotiation to mediation, and ultimately to arbitration.

In effect, these contractual provisions determine the manner in which disputes between the parties are to be resolved, most commonly through arbitration or other forms of alternative dispute resolution.

However, contractual mechanisms do not displace NERC's statutory mandate. Where a dispute engages issues of regulatory compliance or public interest—such as tariff integrity, consumer protection, or licence obligations—NERC may assert jurisdiction either prior to or concurrently with contractual processes. The characterisation of the dispute is therefore critical: where regulatory

⁸ Section 3.3.2 of the NERC, Grid Code provides that in the event that the Dispute cannot be resolved by an Expert it shall be resolved in accordance with the provisions contained in Rule 43 of the Market Rules.

issues are central, recourse to NERC is typically required; where they are incidental, contractual resolution mechanisms may proceed. Careful calibration is accordingly required in both contract drafting and dispute strategy to ensure alignment with the overarching regulatory framework.

Pathway 3 – Judicial Intervention

The third pathway is judicial intervention. Where disputes cannot be resolved through regulatory or contractual mechanisms, the affected parties may approach the Federal High Court (“FHC”) or the relevant State High Court for redress, depending on the applicable regulatory framework.⁹ The FHC is vested with jurisdiction over matters arising under federal laws, including the Act, as well as disputes involving NERC’s decisions and issues affecting the electricity market.

However, the jurisdiction of the courts may only properly be assumed after the statutory and contractual mechanisms have been duly explored or exhausted. The court’s role is therefore largely supervisory and appellate, encompassing the review of regulatory decisions, the determination of legal issues arising from contractual disputes, and the enforcement of arbitral awards.¹⁰

This position has been reinforced by the Federal High Court (Nigerian Electricity Supply Industry) Practice Directions 2026 (the “**2026 Directions**”), which introduced sector-specific procedural requirements. Notably, the 2026 Directions mandate the filing of a pre-action affidavit confirming that all applicable internal, contractual, and regulatory mechanisms have been fully exhausted.¹¹ They also provide for expedited proceedings, active case management, and specialised handling of sector disputes.

The courts have consistently affirmed this structured approach. In **Manufacturers Association of Nigeria v. Abuja Electricity Distribution Company Plc & 11 Ors**,¹² the Federal High Court struck out a challenge to electricity tariff adjustments on the ground that the plaintiff had failed to follow the dispute resolution procedure under section 51 of the Act. The Court held that the action was premature and constituted an abuse of court process, underscoring the imperative to exhaust statutory remedies before litigation.

Similarly, Nigerian courts have rejected attempts to circumvent sector-specific mechanisms by framing electricity-related grievances as constitutional claims. In **Folorunsho Bamidele & 7 Ors v. The Attorney General of the Federation & Ors**, the Court held that access to electricity does not constitute an enforceable fundamental right under the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and that such claims must be pursued within the frameworks established for the sector.¹³

The dispute resolution framework under the Act accordingly imposes a clear obligation of sequencing. Parties must carefully navigate the regulatory and contractual layers before invoking the jurisdiction of the courts.

⁹ This position is subject to the constitutional allocation of jurisdiction between the Federal High Court and State High Courts. By virtue of section 251(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Federal High Court retains exclusive jurisdiction over matters arising from federal enactments and the operations of federal agencies, including disputes involving NERC and matters within the national electricity market governed by the Electricity Act 2023. However, following The Fifth Alteration (No. 33) Act 2023 to the Constitution permitting States to legislate on electricity within their territories, State High Courts may exercise jurisdiction over intra-state electricity matters governed by State laws. For instance, under the Lagos State Electricity Law 2024, the Lagos State Electricity Regulatory Commission (LASERC) is empowered to regulate electricity activities within Lagos State, and disputes arising from such intra-state electricity operations may fall within the jurisdiction of the Lagos State High Court, subject to the exhaustion of applicable regulatory mechanisms. Accordingly, the appropriate forum for judicial redress will depend on whether the dispute arises within the federal (inter-state/national grid) or state (intra-state electricity market) regulatory framework.

¹⁰ Where the dispute arises from a state law, the High Court of the relevant state would have jurisdiction to entertain and resolve the dispute.

¹¹ See Order 4 of the 2026 Directions.

¹² Suit No: FHC/L/CS/881/2024.

¹³ Suit No: FHC/L/CS/490/2024.

The Federal High Court and 2026 Directions at a Glance

Issued pursuant to the Federal High Court (Civil Procedure) Rules, 2019, the 2026 Directions introduce a specialised procedural framework with targeted innovations designed to address the technical and commercial complexity of electricity sector disputes.

Key features include fast-track handling of electricity disputes; mandatory pre-action affidavits confirming exhaustion of ADR mechanisms; the introduction of technical statements to assist judicial understanding; expanded modes of service on corporate entities; and the establishment of a dedicated NESI Register. The 2026 Directions also impose strict timelines for interlocutory applications with an emphasis on written advocacy, enhance cost and sanctioning powers to deter frivolous claims, and align with the appellate framework for reviewing NERC decisions under the Act.

Collectively, these reforms promote procedural efficiency, judicial specialisation, and substantive fairness in the adjudication of electricity disputes.

Conclusion

Dispute resolution in the electricity sector, particularly under the Act, is multi-layered and cannot be approached as a conventional, one-dimensional process. The framework is deliberately structured to ensure that disputes are first addressed within the sector's specialised regulatory and contractual ecosystem, with judicial intervention operating as a mechanism of last resort.

For market participants, the key insight is that dispute resolution under the Act is both strategic and pathway-dependent. Failure to follow the prescribed pathways may result not only in delay, but in the outright dismissal of claims.

Careful contractual drafting is equally critical. Dispute resolution clauses should be clearly articulated to align with the regulatory framework under the Act, in order to minimise jurisdictional conflicts and reduce the risk of procedural missteps.

Finally, regulatory oversight remains a constant—and, in some cases, a determinative—feature of the dispute resolution landscape. Even where disputes are characteristically private, the potential for regulatory intersection, particularly where public interest issues are engaged, should be anticipated. Navigating this terrain effectively requires a sophisticated understanding of both the legal framework and the operational realities of the sector, supported by informed legal counsel.

If you require any further clarification, do not hesitate to contact us.