ADJUDICATION TOWARDS THE GROWTH OF THE ELECTRICITY INDUSTRY IN NIGERIA.

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1.0. INTRODUCTION

The Electricity Industry in Nigeria is pivotal for the Nation's economic growth and development. However, it has faced persistent challenges including infrastructural deficiencies, regulatory hurdles, and financial instability at least in the last 35 years.

Adjudication plays a vital role in the growth of Nigeria's electricity industry like in other spheres of our national life by ensuring contract enforcement, resolving disputes, and maintaining regulatory compliance. Effective adjudication fosters a stable and predictable market environment, which is crucial for attracting investment and ensuring reliable electricity supply.

The availability and reliability of electricity are fundamental to national development. It underpins economic growth, enhances the quality of life, drives technological innovation, and supports environmental sustainability. Addressing the challenges within the electricity sector, through effective adjudication, is crucial for realizing these benefits and ensuring the long-term development and prosperity of Nigeria.

The paper will advocate that electricity should be viewed as an economic service rather than socialservice, and how adjudication can play critical roles in fostering the growth of the electricity industry in Nigeria.

2.0. IS ELECTRICITY A BUSINESS OR SOCIAL SERVICE"?

In Nigeria, the notion that electricity should be cheap because it is a 'social service' has led to significant inefficiencies in the Sector. This belief stems from the idea that access to electricity should be

a basic human right and should be affordable for all citizens if not free. The concept that electricity should be cheap as a social service has contributed to inefficiencies and reliance on government subsidies in Nigeria's power sector. This perspection has several adverse implications:

1. **Inefficiencies in the Electricity Sector**

- Underinvestment: The expectation of low tariff discourages private investment in the power sector. Investors are wary of entering a market where returns are limited by artificially low tariffs.
- **Operational Challenges:** Power companies often struggle to cover operational costs, leading to poor maintenance, frequent I- 0'P1 1outages, and a lack of infrastructure improvements. This results in unreliable power supply, further exacerbating inefficiencies.
- **Revenue Shortfalls:** The low tariffs result in insufficient revenue for power companies, hindering their ability to expand and improve services. This perpetuates a cycle of underperformance and dissatisfaction among consumers.

2. **Government Subsidies**

    - **Financial Burden:** The government spends substantial amounts subsidizing electricity to keep tariffs low. These subsidies strain public finances, diverting funds from other critical areas such as healthcare, education, and infrastructure.
    - **Market Distortions:** Subsidies distort the market by keeping tariffs artificially low, which discourages energy conservation and the adoption of more efficient technologies. Consumers are less likely to moderate their consumption if tariffs do not reflect the true cost of production and distribution.
    - **Corruption:** The quatum of subsidies is usually difficult to ascertain and leads to corruption.

2.1. Electricity as a Business

In the context of Nigeria's constitutional framework, the provision of electricity is a nuanced issue. While electricity is essential for both economic development and social welfare, it is not explicitly

categorized as either a state policy or a federal responsibility. Instead, it is placed on the Concurrent Legislative List, primarily for the purposes of regulation rather than being recognized as a social service. This positioning has significant implications for how the supply of electricity is managed and provided in Nigeria.

The inclusion of electricity on the Concurrent List emphasizes regulation over direct provision. This means the government's role is more about creating and enforcing rules to manage how electricity is produced, distributed, and consumed, rather than directly providing electricity as a public service.

Unlike healthcare or education, which are more explicitly addressed as social services in the constitution, electricity does not receive the same treatment. The regulatory approach suggests that electricity provision is viewed more through the lens of infrastructure and economic management rather than as a fundamental social entitlement.

Treating electricity as a business involves considering it a commodity that must be managed through market principles to ensure efficiency, sustainability, and profitability. This perspective aligns with several provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and its alterations, which support economic development and private sector participation.

2.2. Constitutional Basis for Electricity as a Business

1. Economic Efficiency and Development:Section 16(1) of the 1999 Constitution mandates the state to "harness the resources of the nation and promote national prosperity and an efficient, dynamic and self-reliant economy." Treating electricity as a business promotes economic efficiency, ensuring that resources are allocated optimally and reducing waste.

2. Private Sector Participation: Section 16(2) (c) encourages "the participation of persons in any area of the economy other than the major sectors of the economy." Encouraging private sector involvement in electricity generation, transmission, and distribution can drive innovation, attract investment, and improve service delivery.

the Electricity Act (2023) guarantees the de-centralisation and de- monopolisation of Nigeria's electricity generation, transmission, and distribution at the National level and authorizes states, companies, and individuals to generate, transmit and distribute electricity. Under the Act, States are empowered to issue licenses to private investors who in turn would be permitted to set-up and operate mini-grids and power plants within the State. The licenses obtainable include: electricity generation license (excluding captive generation); lectricity transmission license; electricity distribution license; electricity supply license; electricity trading license; and system operation license. These licenses enable private entities to participate in different aspects of the electricity value chain, thereby promoting competition, and encouraging innovation to solve the growing energy needs of Nigeria.

3. Sustainable Development: Sustainable economic development is a constitutional goal, and a market-driven electricity sector can contribute to this by ensuring long-term viability and reducing the financial burden on the state.

2.3. Benefits of Treating Electricity as a Business

1. Attracting Investment: Recently the Minister of Power, Adebayo Adelabu stated that the revised tariff has led to renewed interest of investors in the Nigeria's power sector. He noted that both local and foreign investors who formerly were avoiding the sector are coming back to invest, which is good for the Sector. Private investment is crucial for expanding and modernizing the electricity infrastructure. Market-driven pricing ensures that investors can achieve reasonable returns, making the sector more attractive.

2. Enhancing Efficiency: Businesses aim to minimize costs and maximize efficiency. Applying business principles to the electricity sector can lead to better management practices, reduced losses, and improved service quality.

3. Innovation and Technology: Competition in the market can drive innovation. Private companies are more likely to invest in new

technologies and renewable energy sources, leading to a more modern and sustainable electricity sector.

4. Cost Reflective Tariffs: Implementing cost-reflective tariffs ensures that electricity prices reflect the actual cost of production and distribution. This can lead to a more financially stable and sustainable electricity sector, reducing reliance on government subsidies.

5. Economic Growth: A reliable and efficiently managed electricity sector is essential for economic growth. It supports industrialization, job creation, and overall economic development.

2.4. Tariff Regulation and Subsidies under the Act

It is prescribed in the Act that, certain activities such as the generation and trading, transmission, distribution, supply and system operation, electricity distribution franchising - in the NESI are subject to tariff regulation. It warrants tariff methodologies publications, with the purpose of allowing consumers and stakeholders to understand the basis for tariff calculations. Tariff regulations aim to balance the financial viability of power providers with the affordability of electricity for consumers. Furthermore, the Act establishes the Power Consumer Assistance Fund (PCAF) for the purpose of subsidising underprivileged power consumers as specified by the Minister in consultation with the NERC.

Thus, while treating electricity as a business can lead to higher tariffs, targeted subsidies and social safety nets can help ensure that low-income households can still afford electricity. Rather than blanket subsidies, the government can implement targeted subsidies aimed at the most vulnerable populations. This approach helps ensure that those in need receive support without placing an undue burden on the economy.

By adopting a balanced approach, Nigeria can achieve a robust and efficient electricity sector that supports its broader economic and social development goals.

The provision of electricity in Nigeria, as outlined in the 1999 Constitution, is primarily a regulatory matter on the Concurrent Legislative List, involving both federal and state governments. This

approach emphasizes creating and enforcing regulations over direct provision as a social service. While this regulatory focus can drive efficiency, investment, and innovation in the electricity sector, it also necessitates careful management to ensure that the benefits are equitably distributed and that all citizens have access to reliable and affordable electricity.

3.0. BRIEF HISTORY OF ELECTRICITY IN NIGERIA

The history of Nigeria's electricity industry date back to 1896 when electricity was first generated in Lagos. The establishment of the Nigerian Electricity Supply Company (NESCO) in 1929 marked the beginning of structured electricity generation and distribution. Post- independence, the National Electric Power Authority (NEPA) was created in 1972 to unify electricity production and distribution.

NEPA held a monopoly over the electricity industry, managing generation, transmission, and distribution. However, it was plagued by inefficiency, corruption, and inadequate infrastructure, leading to widespread power shortages and outages. Lack of investment in the Sector for many years did not help matters.

To address these issues, the Government initiated reforms aimed at liberalizing the sector. The Electric Power Sector Reform Act (EPSRA) of 2005 was a significant milestone, leading to the unbundling of NEPA into 18 successor companies: made up 6 generation companies (GENCOs), 11 distribution companies (DISCOs), and 1 transmission company (TCN). We now have the Electricity Act, 2023 which repealed the Electric Power Sector Reform Act (EPSRA) 2005.

4.0. KEY LEGISLATIONS AND REGULATIONS RELATED TO ADJUDICATION

Within the legal and regulatory framework, there are specific laws and regulations that address adjudication and dispute resolution within the Nigerian electricity industry.

1. Constitution of the Federal Republic of Nigeria 1999 (As amended): This is the grundnorm. It established all the superior Courts of record vide Section 6, vesting judicial powers of the federation in the courts. The power to hear and determine civil

cases relating to commercial transactions have been vested in the hands of both the Federal and State Courts, as well as the National Industrial Court.

The Constitution in Section **4(13), (14) and 15, Part 2** of the Second Schedule to the Constitution, contains constitutional provisions empowering the Houses of Assembly of States to legislate on all matters relating to electric power within its borders, whether or not covered by the national grid.

In essence, they confers the State with: (i) powers to generally make laws regarding the generation, transmission and distribution of electricity, within their respective States; (ii) the latitude to regulate the generation, transmission and distribution of electricity within the States. Thus, the new Electricity Act 2023 is in consonance with the provisions of the Constitution.

2. **Electricity Act 2023:** This Act is the principal law that regulates the electricity Industry. The Act applies throughout the Federation and across the entire NESI value chain. It established the Nigerian Electricity Regulatory Commission, stating its powers and functions under part 5 of the Act. It also empowers the Commission **videSection 226(2)** to make regulations for the conduct of proceeding and hearing. By the provisions of the New Act, any person dissatisfied with the decision of the Commission on the grant of a license or any other matter may file an appeal to the Federal High Court (FHC) within thirty (30) days subject to the rules of the FHC.

3. **Federal High Court Rules:** Questions of law arising from the decision of the Commission is to be referred to the FHC (Section 50 (1), (2) of the ACT). Appeals from the decision of the Commission go to the FHC and is subject to the Rules of FHC. However, every aggrieved person must exhaust all internal dispute settlement mechanisms provided pursuant to the provisions of the Act, before initiating court action at the FHC, see Section 51(1-5) of the Electricity Act, 2023.

4. **States High Court Rules**: Shares coordinate jurisdiction with the FHC, matters can also be filed to this court after exhausting all the internal mechanism for resolution of dispute. By the NERC business rules, questions of law may also be referred to the High court

5. **Court of Appeal and the Supreme Court Rules:** Appeals from the Federal High Court/High Court will be filed at the Court of Appeal, where a party is also dissatisfied with the decision of the Court of Appeal, such aggrieved party can appeal to the Supreme court. The rule of these Courts will also apply respectively.

6. **NERC Business Rules of the Commission Regulation 2006:** By Section 96 (2) of the repealed EPSRA 2005 now section 226(2) of the Electricity Act 2023 empowers NERC to make regulations for the conduct of its proceedings and the discharge of its functions. Chapter II of this regulation covers rules concerning meeting of and proceedings before the Commission. The NERC appointed a DRP (Dispute Resolution Panel) that is saddled with the administration of the dispute resolution provisions of the Market Rules.)

7. **Market Rules of NESI (Nigerian Electricity Supply Industry):** The Market Rules and Procedures form an integral part of the regulatory framework, governing the operations of the electricity market in Nigeria. These rules outline the roles and responsibilities of market participants, market conduct, and dispute resolution mechanisms. They provide a comprehensive guide for addressing conflicts within the market.

8. Contracts and Power Purchase Agreements (PPAs): Specific laws and regulations related to contractual agreements, such as Power Purchase Agreements (PPAs), play crucial role in dispute resolution mechanism under the Act. These contracts typically include provisions that outline mechanisms for resolving disputes between parties involved in electricity generation, transmission, and distribution.

9. **Arbitration and Conciliation Act, 2023**

The Arbitration and Conciliation Act provides a broader legal framework applicable to dispute resolution mechanisms, including those within the electricity sector. It allows for alternative dispute resolution methods such as arbitration, mediation and conciliation, providing flexibility and efficiency in resolving conflicts.

10. **Rules of common law** that may be found applicable especially if there are no statutory provisions under our existing substantive or procedural laws or rules In summary, Nigeria's electricity industry operates within a robust legal and regulatory framework, with specific provisions addressing adjudication and dispute resolution. These mechanisms aim to ensure fairness, transparency, and efficiency in handling conflicts within the sector.

5.0. ADJUDICATION IN THE ELECTRICITY INDUSTRY

5.1. Definition and Scope: Adjudication refers to the legal process by which a judge or regulatory body resolves disputes, enforces laws, and ensures compliance within a regulatory framework. Adjudication in the electricity industry refers to the process of resolving disputes, enforcing regulations, and ensuring compliance with legal frameworks within the sector. It involves the intervention of regulatory bodies, judicial entities, or specialized tribunals to address conflicts and uphold the rule of law

5.2. Importance in the Electricity Sector:

- Adjudication ensures that the rules and regulations governing the electricity sector are applied fairly and consistently.
- It provides a mechanism for resolving disputes between various stakeholders, including generation companies (GENCOs), distribution companies (DISCOs), consumers, and regulatory bodies.
- Effective adjudication upholds contractual obligations, mitigates risks, and creates a stable environment conducive to investment and growth.

5.3. **Implications of Adjudication in the Sector:**

1. **Investment Attraction and Retention**

- Predictability and Stability: Investors seek stable and predictable regulatory environments. Adjudication ensures that contracts are enforced and disputes are resolved fairly, reducing uncertainty and risk.
- **Investor Confidence:** When investors see that regulatory bodies like NERC can enforce agreements and handle disputes efficiently, their confidence in the market increases, leading to greater investment in infrastructure and technology.

2. **Market Efficiency and Performance**

- **Contract Enforcement:** By enforcing performance agreements, adjudication ensures that GENCOs and DISCOs adhere to their commitments, leading to improved efficiency and service delivery.
- **Dispute Resolution:** Efficient resolution of disputes prevents prolonged disruptions in service and operational inefficiencies, maintaining the smooth functioning of the electricity market.

3. **Financial Viability and Sustainability**

- **Tariff Regulation:** Adjudication plays a critical role in setting and adjusting tariffs to reflect the true cost of electricity production and distribution. This ensures that electricity companies remain financially viable while balancing consumer affordability.
- **Reduction of Losses:** Through regulatory oversight and enforcement actions, adjudication helps reduce technical and commercial losses, improving the overall financial health of the sector.

4. **Consumer Protection and Satisfaction Billing and Service Quality:** Adjudication addresses consumer complaints related to billing inaccuracies and poor service delivery. This ensures that consumers are treated fairly and that DISCOS improve their practices.

Access to Justice:

By providing a legal avenue for consumers to seek redress, adjudication enhances public trust in the electricity sector and promotes compliance with consumer protection regulations.

5. **Encouraging Compliance and Accountability**

Regulatory Compliance: Adjudication ensures that all stakeholders comply with industry regulations and standards, fostering a culture of accountability.

Deterrence of Malpractices: The possibility of legal consequences deters companies from engaging in malpractices such as overcharging, service neglect, and contractual breaches.

Adjudication plays a critical role in the electricity industry by resolving disputes, enforcing regulations, and ensuring compliance with legal frameworks. It promotes fairness, transparency, and accountability, fostering investor confidence, market integrity, and industry efficiency. Legal and regulatory frameworks provide the foundation for adjudication, establishing the rules that govern the behavior of market participants and safeguarding consumer rights. As the electricity sector continues to evolve, effective adjudication will remain essential for maintaining a stable, reliable, and sustainable energy system.'

6.0. RULES OF INTERPRETATION

The Electricity Act provides a legal framework for the generation, transmission, distribution, and regulation of electricity. Interpreting this act can be approached through different modes of interpretation, each providing a unique perspective and guiding principles. I am aware of the theories of interpretation of Statutes, like the Golden Rule, Litera Rule, Ejusdem Generis Rule e.t.c but I want to propose the following interpretative rules for Electricity Act 2023 to ensure that the Act meets the objectives of the Law Makers.

1. **PURPOSEFUL INTERPRETATION:**

   Purposeful interpretation involves understanding and applying the provisions of a law based on the underlying intent and objectives

of the legislation. This approach goes beyond the literal meaning of the words to consider the broader goals and purposes that the lawmakers aimed to achieve.

To my mind the objectives of the Electricity Act are the following:

a. **Improve the reliability and efficiency of electricity supply.**

Purpose: Ensure a stable and efficient electricity supply to support economic growth and improve the quality of life.

Interpretation: Regulatory provisions should be enforced to reduce losses, enhance grid stability, and promote efficient management practices. Investment in infrastructure upgrades and modernization should be prioritized to achieve these goals.

b. **Increase access to electricity across the country.**

Purpose: Achieve universal electricity access, particularly in rural and underserved areas.

Interpretation: Policies and programs under the Act should focus on expanding the electricity grid and implementing off-grid solutions where necessary. Subsidies and incentives can be used to make electricity more affordable and accessible to low-income households.

c. **Encourage private sector participation and investment.**

Purpose: Attract private investment to improve service delivery and infrastructure.

Interpretation: The regulatory environment should be designed to create a favorable investment climate, including clear and consistent policies, streamlined approval processes, and financial incentives. Private companies should be encouraged to participate in generation, transmission, and distribution.

d. **Ensure sustainable development and use of renewable energy sources.**

Purpose: Promote environmental sustainability and reduce dependence on fossil fuels.

Interpretation: The Act supports the development and integration of renewable energy sources, such as solar, wind, and hydroelectric power. This includes providing incentives for renewable energy projects, setting renewable energy targets, and facilitating grid access for renewable energy providers.

e. **Protect consumers and ensure fair pricing.**

Purpose: Safeguard consumer interests and ensure that electricity tariffs are fair and affordable.
Interpretation: The regulatory framework should include mechanisms for consumer protection, such as dispute resolution processes and transparency in tariff setting. Policies should ensure that tariffs are cost-reflective yet affordable, with targeted subsidies for vulnerable populations. It is therefore important for the purpose of this rule of Intepretation to implement regulatory reforms that align with the purposes of the Act. This includes updating regulations to reflect modern practices and technologies, ensuring transparency and accountability, and enhancing regulatory oversight. Also encourage public-private partnerships (PPPs) to leverage private sector efficiency and innovation while ensuring public interest and accountability. PPPS

3. MINIMAL DISRUPTIVE INTERPRETATION

This focuses on applying legal provisions in a way that causes the least disruption to existing structures, business model and practices.

Application to the Electricity Act:

a. Continuity: Emphasize maintaining the current regulatory and operational frameworks. Ensure that any reforms are incremental and do not cause significant upheaval.

b. Gradual Reforms: Introduce changes in stages, allowing stakeholders to adjust over time. For example, gradually increasing tariffs to reflect actual costs without causing a sudden financial burden on consumers.

c. Stakeholder Stability: Maintain stability for existing electricity providers and regulators, ensuring that they can continue their operations with minimal disruption.

3. **HISTORICAL INTERPRETATION**

This means understanding legal provisions based on the historical context and intentions of the lawmakers at the time the law was

enacted. One looks back to determine the trajectory of the provisions of the Statute. It's a varial of mischief rule of interpretation.

Application to the Electricity Act:

a. Legislative Intent: Consider the historical context in which the Electricity Act was passed. Understand the objectives the lawmakers aimed to achieve, such as increasing access to electricity and improving reliability.

b. Evolution of Policy: Analyze how the electricity sector has evolved over time. This includes considering previous legislation and reforms that have shaped the current framework.

C. Contextual Application: Apply the Act in a manner that honors the original goals, such as fostering economic development and ensuring equitable access to electricity.

4. FIT FOR PURPOSE INTERPRETATION

This focuses on applying and interpreting legal provisions in a way that best serves current societal needs and realities.

Application to the Electricity Act:

a. Current Needs: Address the present challenges in the electricity sector, such as frequent outages, infrastructure deficits, and access disparities.

b. Modern Solutions: Promote the adoption of modern technologies and practices, including renewable energy sources and smart grids.

c. Responsive Regulation: Ensure that the regulatory framework is adaptable and capable of responding to the dynamic needs of the sector and its consumers.

5. IMPACTFUL INTERPRETATION

This aims to maximize the positive outcomes of applying legal provisions, focusing on significant and widespread benefits. What impact adoption of one interpretation over another not only on the litigant but the society e.t.c.

Application to the Electricity Act:

a. Maximize Access: Implement policies that ensure widespread access to electricity, particularly in underserved and rural areas.

b. Economic Growth: Foster conditions that enable the electricity sector to drive economic growth, such as incentivizing private investment and improving infrastructure.

c. Sustainability: Encourage sustainable practices that benefit both the environment and the economy, such as promoting renewable energy projects.

6. **NEED BASIS INTERPRETATION**

This method of interpretation involves applying legal provisions based on the most pressing needs and priorities of the population.

Application to the Electricity Act:

a. **Urgent Needs:** Focus on addressing the most critical issues first, such as power shortages and unreliable supply.

b. **Equitable Access:** Prioritize policies that ensure equitable access to electricity for all segments of society, especially marginalized and low-income communities.

c. **Targeted Interventions:** Develop targeted programs and subsidies to support the most vulnerable populations and regions. Each mode of interpretation provides a unique perspective on how to apply the provisions of the Electricity Act in Nigeria:

7.0. ROLE OF ADJUDICATION IN MAINTAINING STABILITY AND FOSTERING GROWTH IN THE SECTOR:

Adjudication plays a crucial role in ensuring stability and fostering growth within the electricity sector, acting as a linchpin for effective conflict resolution.

1. Contract Enforcement: Contracts between generation companies (GENCOS), distribution companies (DISCOs), and other stakeholders must be upheld to ensure the reliability and efficiency of electricity supply. Adjudication ensures that performance agreements, power purchase agreements, and service level

agreements are adhered to, providing a reliable legal recourse for breaches.

2. Dispute Resolution: Disputes can arise over tariffs, service delivery, billing, metering, and contractual obligations. Efficient dispute resolution mechanisms are critical to maintaining operational stability.

3. Legal Certainty: Adjudication provides legal certainty by offering a structured and legally binding resolution on disputes. This certainty is foundational for creating a stable environment in which industry participants can operate with confidence.

4. Preserving Contractual Integrity: In a sector heavily reliant on contractual agreements, adjudication helps preserve the integrity of contracts. The enforcement of contractual obligations through adjudication mechanisms ensures that parties fulfill their commitments, maintaining stability in commercial relationships.

5. Preventing Regulatory Arbitrariness: Adjudication acts as a check against regulatory arbitrariness. It ensures that regulatory decisions are fair, transparent, and in compliance with established legal frameworks. This stability is essential for the long-term planning and investments required for the growth of the Sector.

6. Resolving Complex Technical Disputes: The electricity industry often faces complex technical disputes. Adjudicators with expertise in the industry can effectively navigate these complexities, providing informed decisions that contribute to the resolution of technical issues and the sector's overall stability.

7. Facilitating Innovation and Modernization: By resolving disputes in a fair and efficient manner, adjudication supports innovation within the sector. This is critical for fostering technological advancements, modernizing infrastructure, and adapting to evolving energy landscapes.

8. Adapting to Changing Market Dynamics: The electricity sector is dynamic, with changing market dynamics and regulatory frameworks. Adjudication allows for the adaptation of the sector to these changes, ensuring that conflicts arising from such dynamics are resolved in a way that supports continued growth and development.

9. Public Confidence and Trust: A stable and efficiently managed electricity sector enhances public confidence and trust. Fair dispute resolution mechanisms demonstrate accountability and responsiveness, strengthening the sector's reputation among consumers and the general public.

Fair and efficient dispute resolution mechanisms, with adjudication as a key component, are indispensable for maintaining stability and fostering the growth of the electricity sector. These mechanisms contribute to a conducive environment for investments, innovation, and sustainable development, ultimately benefiting all stakeholders involved including the Consumers of electricity..

8.0. CHALLENGES AND LIMITATIONS:

Dispute resolution generally in the electricity industry like in other spheres face several challenges and limitations that can impact the effectiveness of the resolution process:

1. Regulatory Overlap and Jurisdictional Conflicts: Multiple regulatory bodies sometimes have overlapping mandates, leading to conflicts and inefficiencies. For example, the roles of NERC and other state regulatory agencies may sometimes clash, causing confusion and delays in decision-making. This overlap complicates the enforcement of regulations and creates uncertainty for market participants.

2. Judicial Delays and Inefficiencies: The judicial system in Nigeria is often slow, with significant delays in the resolution of disputes This inefficiency is exacerbated by a backlog of cases and limited resources. Prolonged legal processes can hinder timely resolution of disputes, leading to financial losses and operational disruptions to the Players in the Industry.

3. Corruption and external Influences: Corruption within the regulatory and judicial systems can undermine the fairness and effectiveness of adjudication. Bribery, favoritism, and other corrupt practices can distort outcomes and erode trust in the system. Corruption can lead to unjust decisions, discourage investment, and perpetuate inefficiencies within the industry.

4. Inadequate Regulatory Capacity: NERC and other regulatory bodies sometime lack the necessary resources, expertise, and autonomy to effectively oversee and adjudicate within the electricity sector. This limits their ability to enforce regulations. resolve disputes efficiently, and implement necessary reforms.

5. Public Perception and Awareness: There is often a lack of public understanding and awareness about the economic nature of electricity and the importance of compliance with regulations. This can lead to resistance to necessary reforms, such as tariff adjustments, and undermine efforts to improve service delivery and financial sustainability.

6. Complex Regulatory Environment: The electricity sector operates within a complex regulatory framework. Understanding and navigating intricate regulations can be challenging for adjudicators, leading to potential delays in resolving disputes. Lack of clarity in regulations and constant changes in the regulatory landscape is a barrier.

7. Technical Complexity: Disputes often involve intricate technical subjects related to power generation, transmission, and distribution. Adjudicators may lack the necessary technical sexpertise, leading to difficulties in comprehending and resolving complex technical disputes. Limited availability of adjudicators with specialized knowledge in the electricity industry.

8. Contractual Ambiguities: Ambiguities or gaps in contractual agreements, such as Power Purchase Agreements (PPAs), can create challenges in interpreting and applying contractual terms.Incomplete or poorly drafted contracts may result in prolonged adjudication processes.

9. Power Imbalance: Power imbalances between larger entities, such as Generation Companies (GenCos) or Distribution Companies (DisCos), and smaller market participants may affect the fairness of the adjudication process. Unequal bargaining power may lead to challenges in ensuring equitable outcomes.

9.0. CHALLENGES OF ADJUDICATION UNDER THE ELECTRICITY ACT REGIME

1. Multi-Stakeholder Disputes: Disputes involving multiple stakeholders, including government bodies, private companies, and consumers, can be more challenging due to the diverse interests and conflicting priorities.Complexity in aligning diverse interests and balancing competing claims is real and a big challenge that will tax Adjudicators.

2. Cross-Border Disputes: Cases involving entities operating across different jurisdictions may throw up challenges related to varying legal frameworks and international regulations. Differences in legal standards, enforcement mechanisms, and cultural nuances. Now that the Constitution and by virtue of Section 2 of the Electricity Act 2023 empower the Assemblies of the Federating states to make laws and regulations on all matters relating to electricity within the State, a new conundrum has been thrown up.

3. Long-Term Contractual Disputes: Disputes arising from long- term contractual agreements, such as Power Purchase Agreements (PPAs), may be more challenging due to changing market conditions and unforeseen events. Ambiguities in contract terrns, evolving market dynamics, and the difficulty of predicting long-term economic conditions are potentials draw backs for effective adjudication.

4. Emerging Technology Disputes: Disputes related to emerging technologies, such as renewable energy projects, may be challenging due to evolving technical standards and limited precedents. Rapid technological advancements, uncertainty in performance metrics, and the need for specialized expertise are also issues of concern.

5. Consumer Complaints: Disputes involving consumer complaints may be challenging due to the need for effective communication and the potential for emotional considerations. Balancing consumer interests, regulatory compliance, and financial viability, are matters that will come up for resolution with their complexities.

6. Force Majeure: Cases involving force majeure, such as natural disasters or political instability, may pose challenges in determining liability and establishing fair compensation. Unpredictable external

events, legal interpretations of force majeure clauses, and the allocation of risks will be up for adjudication with attendant uncertainties.

10.0. RECOMMENDATIONS FOR IMPROVEMENT IN THE DISPUTE RESOLUTION PROCESS INN THE ELECTRICITY SPACE:

To enhance the dispute resolution processes within the electricity industry in Nigeria and promote transparency, fairness, and efficiency, the following strategies and suggestions can be considered:

1. **Specialized Training for Adjudicators:** Provide specialized training programs for adjudicators, equipping them with in-depth knowledge of the electricity industry, technical expertise, and an understanding of relevant regulations. This ensures that adjudicators can effectively navigate complex technical disputes and interpret industry-specific contractual agreements.
2. **Establishment of Specialized Adjudication Bodies:** Establish specialized adjudication bodies or panels dedicated to handling electricity industry disputes. These bodies should consist of experts law, engineering, and with economics. Specialization fosters a deeper understanding of industry-specific challenges and promotes consistent, well-informed decisions. diverse backgrounds
3. **Clearer Regulatory Framework:** Enhance the clarity and coherence of the regulatory framework governing the electricity sector. Regularly review and update regulations to address emerging issues and technological advancements. A clear and up-to-date regulatory framework reduces ambiguity, helping adjudicators make well-informed decisions.
4. **Anti-Corruption Measures:** Implement stringent anti-corruption measures to ensure the integrity of regulatory and adjudicative processes.
5. **Public Awareness and Education:** Increase public awareness about the economic nature of electricity and the importance of compliance

with regulations. The Citizens must be schooled to understand that provision of electricity is not a social but economic service.

6. Utilization of Alternative Dispute Resolution (ADR): Encourage the use of alternative dispute resolution mechanisms, such as mediation and arbitration, through regulatory incentives. Continue to promote ADR as a first step before resorting to litigation. ADR methods often lead to faster, more cost-effective resolutions and can help preserve relationships between disputing parties.

7. Technology Adoption: Integrate technology into the adjudication process to streamline case management, facilitate electronic evidence submission, and enhance communication between parties and adjudicators. Technological advancements improve the efficiency and transparency of the adjudication process, reducing administrative burdens.

8. Stakeholder Engagement and Public Consultations: Foster greater stakeholder engagement through regular fora, roundtable discussions, and public consultations. Solicit input from industry participants, consumer advocacy groups, and other stakeholders on regulatory changes and dispute resolution mechanisms.Involving stakeholders in decision-making processes enhances transparency and helps identify potential issues before they escalate into disputes.

9. Enhanced Consumer Education: Implement initiatives to educate consumers about their rights, the dispute resolution process, and the importance of reporting grievances. Enhance communication channels for consumer feedback. An informed consumer base contributes to a proactive dispute resolution environment and reduces the likelihood of disputes arising from lack of understanding.

10. Periodic Review of Contractual Agreements: Establish a framework for the periodic review of contractual agreements, such as Power Purchase Agreements (PPAs), to ensure they remain relevant, fair, and aligned with market dynamics.Regular reviews prevent disputes arising from outdated or ambiguous contract terms and support long-term stability.

11. Strengthening Enforcement Mechanism: Strengthen the enforcement mechanisms for decisions, ensuring timely compliance by all parties. Consider measures such as financial penalties for non- compliance. Effective enforcement reinforces the authority of adjudicators and encourages parties to adhere to decisions, contributing to a culture of compliance.

12. Public Accountability and Reporting: Establish mechanisms for public reporting on the outcomes of adjudication cases. Provide stakeholders, including the public, with transparent information on the resolution of disputes. Public accountability promotes trust in the dispute resolution mechanism and demonstrates the industry's commitment to transparency. 13. Legislative and Regulatory Alignment: Ensure alignment between legislative and regulatory frameworks to avoid inconsistencies, overlaps and conflicts that may hinder the adjudication process. Coherent legal frameworks contribute to a stable and predictable environment for adjudication.

14. Continuous Capacity Building: Institute continuous capacity- building programs for industry professionals, Legal practitioners. Judges and Regulators to stay abreast of industry developments, emerging technologies, and best practices in dispute resolution. Ongoing education ensures that all stakeholders involved in the adjudication process are well-equipped to address evolving challenges. By implementing these recommendations, the dispute resolution process in the Nigerian electricity industry can be strengthened. fostering a more transparent, fair, and efficient resolution of disputes.

11.00 CONCLUSION:

In closing, the adjudication process within the electricity industry in Nigeria plays a crucial role in maintaining stability, ensuring fair competition, and resolving disputes among various stakeholders. The complex nature of the industry, with its technical intricacies,

contractual obligations, and regulatory frameworks, necessitate an effective and efficient dispute resolution mechanism.

Despite the challenges and limitations faced in the adjudication process, there are significant opportunities for improvement. The recommendations put forth aim to enhance the process by addressing key issues such as specialized training for adjudicators, the establishment of dedicated bodies, clarity in the regulatory framework, and the promotion of alternative dispute resolution methods.

The success of these recommendations relies on collaborative efforts among regulators, industry participants, legal professionals, and other stakeholders. Transparent communication, stakeholder engagement, and continuous capacity building are essential elements in creating an environment where disputes are resolved swiftly and fairly.

As the electricity industry continues to evolve and embrace new technologies, regulatory bodies and adjudicators must remain adaptive and proactive in addressing emerging challenges. By fostering a culture of transparency, fairness, and efficiency, the adjudication process can contribute to a robust and sustainable electricity sector in Nigeria. Ultimately, the goal is to create an environment that promotes investment, innovation, and the reliable delivery of electricity services to consumers.

Effective adjudication through robust legal and regulatory frameworks is crucial for the growth and stability of Nigeria's electricity industry. By ensuring compliance, resolving disputes, and fostering a conducive environment for investment, adjudication can significantly contribute to overcoming the sector's challenges. All said deep and specialized knowledge of the electricity sector is a sine qua non to beneficial adjudicatory intervention in this area of our corpus of law.

I thank your Lordships and others for your attentive listening.

REFERENCES:

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2. The Nigerian Arbitration and Conciliation Act Cap A18 Laws of Federal Republic of Nigeria (LFN) 2004

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