



Decision – Opinions on the draft method decision

Annex to the method decision on electricity and drinking water in the Dutch Caribbean 2020 - 2025

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Opinions on the draft method decision on electricity and drinking water in the Dutch Caribbean 2020-2029

This is an English translation of the Dutch version. In the event of any discrepancy between the Dutch version and this translation, and in case of any disputes, the Dutch version prevails

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Contents

1	Introduction and reader's guide	3
2	Opinions on the procedure and the rationale for the method	4
3	Opinions on the legal framework	7
4	Opinions on the regulatory framework	8
5	Opinions on the method of regulation	13
5.1	Opinions on the length of the regulatory period	13
5.2	Opinions on the determination of the tariffs	15
5.2.1	Determining the cost base (including fixed and variable costs)	15
5.2.2	Assessment of major events	22
5.2.3	Application of profit-sharing and other retrospective corrections	23
5.2.4	Other items	27
5.3	Opinions on the reasonable return	28
5.4	Opinions on the energy costs	29

1 Introduction and reader's guide

1. For the purposes of careful decision-making for the adoption of method decisions, ACM offered stakeholders an opportunity to submit opinions. In this annex, ACM considers the opinions submitted by interested parties on the draft method decision on electricity and drinking water in the Dutch Caribbean 2020-2029.¹ This annex forms part of the method decision for the Dutch Caribbean 2020-2025.
2. The following interested parties submitted opinions on the method to ACM:
 - SEC (submitted in writing by e-mail on June 18th, 2019)
 - STUCO (submitted orally during the working visit on June 11th, 2019 and in writing by e-mail on June 5th, 2019)
 - WEB (submitted orally during the working visit on June 5th and 6th, 2019 and in writing by e-mail on July 5th, 2019)
 - ContourGlobal (submitted orally during the videoconference on June 26th, 2019 and in writing by e-mail on June 27th, 2019)
3. The opinions have been considered broadly on the basis of the chapter breakdown of the draft method decision. Where opinions relate fully or partly to the summary in Chapter 1 of the draft method decision, ACM has chosen to consider them in the chapter to which the summary refers. The opinions have been clustered, summarized and numbered by subject. For each opinion, a table shows which respondents submitted the opinion and whether the opinion has led to a change in the draft method decision.² Each opinion is accompanied by a response and a conclusion from ACM.

¹ Stakeholders as referred to in Article 2.1, paragraph 1, of the BES Electricity and Drinking Water Regulation.

² An amendment to the text of the method decision or an amendment or addition to the grounds for the method decision is also deemed to constitute a change.

2 Opinions on the procedure and the rationale for the method

4. In this section, ACM considers opinions relating to Chapter 2 of the draft method decision. More general opinions on ACM's tasks and procedures are also considered.

Opinion 1: "ACM should have informed STUCO more fully and more frequently about the draft method."

Respondents	Does it lead to a change in the method?
STUCO	No

Summary of opinion

5. STUCO states that ACM should have informed it more fully and more frequently in the run-up to the adoption of the draft method decision. STUCO needs additional explanations and requests an additional round of consultations. STUCO explains this as follows.
6. STUCO has not so far felt that there has been an open dialogue or flexibility in dealings with ACM, except for one meeting of a visiting delegation from ACM in June 2019, in which the method was discussed at a very high level. There was no accessible consultation or dialogue, certainly not to the level of detail described in the draft method decision. STUCO feels it was neglected in the process of drawing up the draft method decision.
7. From marginal 99 onwards in the draft method decision, ACM explains how it allocates revenues to the different categories of end-users when setting the tariffs. STUCO wonders whether there is a simpler method. The description is difficult to follow without clear workings, for example in Excel. STUCO suggests that ACM provide these workings. It would then like an opportunity to discuss this model with the persons involved.

ACM's response to the opinion

8. ACM regrets that STUCO feels there has been a lack of open dialogue with and flexibility on the part of ACM. ACM has tried to involve STUCO in all stages of the process. In January, for example, at the start of the process, ACM orally requested STUCO to provide input for the draft method decision. ACM also requested a contribution from STUCO in its e-mail of March 11th. STUCO did not make use of these opportunities, however. ACM is always open to a discussion on this matter with STUCO.
9. ACM does not consider it possible to include an additional consultation round in the schedule, as this would jeopardize timely decision-making on the 2020 tariffs. Moreover, ACM considers that it has provided sufficient opportunities for participation. Of course, STUCO can always direct questions to ACM concerning intended decisions or anything in the method that is unclear.
10. ACM has not published a calculation model with the draft method decision. This is because calculation models are an integral part of the annual tariff decisions, but not of the method decision. ACM fine-tunes these calculation models with the utility companies at a later stage. ACM nevertheless understands STUCO's request to have the workings to illustrate the regulation methodology. For the tariff decisions effective from 1 January 2020, ACM will draw up the calculation models for STUCO and fine-tune them with the company.

Conclusion on the opinion

11. This opinion has not led to a change in the method decision as compared to the draft method decision.

Opinion 2: “ACM should consult on the draft method at the same time as the WACC method.”

Respondents	Does it lead to a change in the method?
STUCO	No

Summary of opinion

12. ACM did not put the draft WACC method out for consultation at the same time as the draft method decision. STUCO considers this approach unacceptable. STUCO is simply unaware of the results of the WACC investigation and its effects on the company.

ACM's response to the opinion

13. ACM stresses that the WACC method and the draft method decision can be read separately. It is possible to submit an informed opinion on the draft method without the WACC method having been published. For the WACC method there is then a six-week consultation period starting on the day of publication. STUCO can make its opinion known at that time. ACM nevertheless understands STUCO's wish. ACM would have liked to announce the WACC method and the draft method at the same time. The WACC investigation nevertheless took longer than expected to complete. ACM opted for a separate consultation to give interested parties an opportunity to submit an opinion as quickly as possible.

Conclusion on the opinion

14. This opinion has not led to a change in the method decision as compared to the draft method decision.

Opinion 3: “ACM should carry out an impact analysis of the effects of the method.”

Respondents	Does it lead to a change in the method?
WEB	No

Summary of opinion

15. WEB requests ACM to carry out an impact analysis of the new method and to include this in the final decision.

ACM's response to the opinion

16. ACM sees no need for an impact analysis and does not intend to conduct one. It nevertheless wishes to emphasize that the intended changes were not devised without due consideration. Experiences from the first regulatory period gave an insight into the operation of the method for ACM and the utility companies. The reasons for the adjustments to the method are explained sufficiently in the draft decision.

Conclusion on the opinion

17. This opinion has not led to a change in the method decision as compared to the draft method decision.

Opinion 4: “ACM should include administrative appeals against the method for the first period in the decision-making for the second period and/or await a judgment from the Joint Court.”

Respondents	Does it lead to a change in the method?
ContourGlobal	No
STUCO	No

Summary of opinion

18. ContourGlobal states that the judicial appeal against the 2017 tariffs is still ongoing. ContourGlobal requests ACM to consider that the objections that it raised in these proceedings against the 2017-2019 method are repeated and incorporated here. ContourGlobal refers to its grounds of appeal without putting forward any further arguments.
19. STUCO considers that the formal implementation of the method decision should be deferred until the results of the current legal proceedings are known.

ACM's response to the opinion

20. With regard to ContourGlobal's request, ACM, in response to the objections raised by ContourGlobal, refers to the judgment of the Court of First Instance of August 22nd, 2018³ and to its statement of defense of April 18th, 2019 with the appended documents, which it submitted in the judicial appeal. CONTOURGLOBAL has not stated in its opinion why this rebuttal is insufficient.⁴
21. The method serves as a basis for the 2020 tariffs. It must therefore be adopted before these decisions. ACM cannot therefore await the results of the current legal proceedings. If required by the judgment of the Joint Court, ACM will consider adapting the present method or taking its effects into account in the tariff decisions.

Conclusion on the opinion

22. This opinion has not led to a change in the method decision as compared to the draft method decision.

³ Court of First Instance of Bonaire, Sint Eustatius and Saba August 22nd, 2018, ECLI:NL:OGHACMB:2018:30.

⁴ See also: ABRvS April 10th 2019, ECLI:NL:RVS:2019:1140 legal consideration 24 and ABRvS July 4th, 2018, ECLI:NL:RVS:2018:2240, legal consideration 17.

3 Opinions on the legal framework

23. In this section, ACM considers opinions relating to Chapter 3 of the draft method decision.

Opinion 5: “Legal remedies must be available against the method decision.”

Respondents	Does it lead to a change in the method?
STUCO	No

Summary of opinion

24. STUCO does not agree with the status of the method decision as a policy rule. It believes this choice is of more benefit to ACM than to the utility companies. STUCO sees the tariff decisions as an extension of the policy. It believes it is more logical and practical if it can directly address the underlying methodology rather than the tariff decisions. It believes its recent pleas in the judicial appeal against ACM's tariff decisions bear out this point, as the subjects that arose during the proceedings were focused not on the tariffs themselves but on the underlying method. STUCO therefore believes that direct remedies against the method must be available.

ACM's response to the opinion

25. The fact that the method is a policy rule follows from the judgment of the Court of First Instance of Bonaire, Sint Eustatius and Saba of July 31st, 2018 in which it considered that the method was intended to be binding on ACM itself rather than on third parties, and also laid down no independent standards.⁵ The BES Administrative Justice Act then offers no possibility of administrative or judicial appeal against a policy rule, so the method must be assessed by means of a production or tariff decision. ACM stresses that this is not its choice; it follows from the Court judgment and the choices made by the legislature. ACM cannot change this through its method decision.

Conclusion on the opinion

26. This opinion has not led to a change in the method decision as compared to the draft method decision.

⁵ Court of First Instance of Bonaire, Sint Eustatius and Saba July 31st, 2018, ECLI:NL:OGHACMB:2018:149, legal consideration 6.8.

4 Opinions on the regulatory framework

27. In this section, ACM considers opinions relating to Chapter 4 of the draft method decision.

Opinion 6: “ACM should provide a better justification of its preference for profit-sharing over alternatives.”

Respondents	Does it lead to a change in the method?
SEC	No
WEB	No

Summary of opinion

28. SEC believes that ACM has only considered other very complex and inefficient alternatives to the method. SEC wants to know why ACM has not considered less complex alternatives and has not explained why these were not chosen.

29. WEB refers to the fact that profit-sharing is only one of the methods that ACM can choose. Nowhere in the legislation is there a description of how profit-sharing should work. For WEB it is important to recoup its costs and be able to maintain sufficient reserves. In this context, WEB does not understand why a method such as cost-plus is disqualified. It believes this method would be perfectly consistent with the legislation.

ACM's response to the opinion

30. ACM has investigated various alternatives in its choice of method. For example, it has looked at cost-plus regulation, a frontier shift and a benchmark. These methods, like profit-sharing, were cited as possible options during the parliamentary passage of the BES Electricity and Drinking Water Act.⁶ In Chapter 4 of the method, ACM explains why profit-sharing best matches the principles and objectives of its regulation and of the BES Electricity and Drinking Water Act. This is in contrast to the cost-plus regulation proposed by WEB, which lacks an efficiency incentive.⁷ As a result, ACM sees no new grounds for considering alternatives to profit-sharing.

Conclusion on the opinion

31. This opinion has not led to a change in the method decision as compared to the draft method decision.

Opinion 7: “Due to the intrinsic motivation and political pressure to operate in a cost-effective manner, the regulation does not need an efficiency incentive.”

Respondents	Does it lead to a change in the method?
SEC	No
WEB	No

Summary of opinion

⁶ See: *Kamerstukken II 2014/15*, 34 089, no. 3, p. 10 and *Kamerstukken II 2014/15*, 34 089, no. 6, p. 17.

⁷ WEB also included its preference for cost-plus in its administrative appeal, judicial appeal and further appeal against the 2017 production price decisions, and for the sake of completeness ACM refers WEB to its statement of defense of February 25th, 2019 in the further appeal.

32. SEC believes that as a public company, political pressure already provides sufficient motivation for it to operate efficiently. Voters could protest, safeguarding the position of the consumer.
33. WEB stresses that there are already many intrinsic efficiency incentives in the Dutch Caribbean. WEB believes that due to the intrinsic incentives, cost-plus regulation would be perfectly consistent with the legislation.

ACM's response to the opinion

34. The objective of the BES Electricity and Drinking Water Act is to ensure a reliable, affordable and sustainable supply of electricity and drinking water in the Dutch Caribbean. Tariff regulation must encourage utility companies to operate efficiently. ACM implements this legislation and fulfils the efficiency objective by including an efficiency incentive in the tariff regulation. The use of cost-plus regulation would not result in an efficiency incentive, and would therefore not properly fulfil ACM's statutory tasks.
35. The fact that SEC already feels sufficiently motivated by political pressure and that voters could protest does not alter this. Both elements can coexist. The same applies to WEB's perceived intrinsic motivation to operate cost-effectively. ACM encourages utility companies to keep in mind the affordability of electricity and drinking water when making choices in their business operations. Article 2.1, paragraph 2, of the BES Electricity and Drinking Water Regulation also states, however, that the method must incentivize the companies to operate efficiently, i.e. aside from any intrinsic incentives that companies perceive. In other words, the intrinsic incentives do not alter the fact that the method itself must include an incentive.

Conclusion on the opinion

36. This opinion has not led to a change in the method decision as compared to the draft method decision.

Opinion 8: "The method leads to an undesirable and unreasonable yo-yo effect."

Respondents	Does it lead to a change in the method?
SEC	No

Summary of opinion

37. SEC states that if the utility company makes a profit, as a result of lower costs, this will detrimentally affect the utility company's future income, due to the 'yo-yo effect' of profit-sharing.
38. SEC recognizes that this effect will ultimately balance itself out, but there is a risk that SEC will have to pre-finance substantial sums. SEC would have to take out an external loan for this purpose, so the tariffs would presumably rise. It wishes to build up a financial buffer before profit-sharing comes into force. It stresses that higher profit results not only from lower costs, but can also result from higher revenues (donations, subsidies, higher volume). SEC sees a problem if higher turnover is combined with lower costs. This will reinforce the 'yo-yo effect'.

ACM's response to the opinion

39. ACM understands what SEC means by its description of the yo-yo effect and is pleased that SEC agrees that these effects will balance out once costs have stabilized. If SEC succeeds in reducing costs over the years (which is the ultimate aim of the efficiency incentive in the tariff regulation),

there will be no yo-yo effect and SEC will see the gap between revenues and costs remaining almost unchanged. SEC can retain half of the achieved cost savings every year. If SEC's costs rise, and the rise is not covered by volume growth, CPI or extra tariff headroom granted by ACM due to major events, SEC will indeed see this difference return temporarily in the form of lower profit. Profit-sharing will then result in SEC being compensated for half of this rise in costs in the second year after the rise. It is true that SEC will have to 'prefinance' this amount, but ACM sees no reason to believe this could not reasonably be accommodated within existing business operations. Moreover, the method assumes that the remuneration will cover a reasonable return in addition to the operating costs and depreciation. A rise in costs will therefore not lead directly to a loss, but in the first instance only to a decrease in the return on equity. A loss will only arise if costs rise to a greater extent than the equity remuneration provided for by the method.⁸

40. ACM will constantly monitor SEC's financial position and enter into discussions with it if it is clear that SEC is running major financial risks. ACM also stresses that in the first instance SEC itself will be in a position to limit cost rises.
41. Finally, ACM wishes to address SEC's statement that the profit-sharing punishes a rise in revenues. In this connection, SEC refers to higher revenues due to volume growth, donations and subsidies. In the case of volume growth, ACM will be making a change to the volume correction for revenues from the second regulatory period. ACM thereby aims to prevent volume growth (or contraction) having an unreasonable effect on the profit-sharing. ACM refers in this regard to marginal 113 of the method decision. For donations and investment subsidies, ACM generally assumes that these additional revenues are intended to cover special costs or investments. ACM prevents these revenues having major effects on the profit-sharing by netting these donations or subsidies against the costs or investments for which they are provided.

Conclusion on the opinion

42. This opinion has not led to a change in the method decision as compared to the draft method decision.

Opinion 9: "The method is complex, not transparent and difficult to implement."

Respondents	Does it lead to a change in the method?
SEC	No
STUCO	No

Summary of opinion

43. SEC considers that the method is hard for companies and consumers to understand. It believes the forthcoming legislation will eliminate a large part of the transparency and clarity. It also believes that ACM's ability to adjust the method results in a lack of transparency.
44. STUCO doubts that the method is simple and sees the new method decision and its application as more complex. STUCO sees ACM's refinement of the regulation as disadvantageous for small entities such as STUCO. This leads to administrative overload and additional effort. ACM gives no indication of cost-benefit assessments. In STUCO's opinion ACM does not respect the basic principles of the regulation, as described in marginals 56 and 57 of the draft method decision.

⁸ In 2019, this cost-of-capital remuneration amounted to approximately USD 440,000, based on the expected Regulatory Asset Base for 2019 and the WACC for 2019. The 2019 OPEX would have to rise by more than 20% to exceed this amount.

ACM's response to the opinion

45. ACM aims to record its method as clearly as possible in its method decision. If certain points are unclear, ACM is prepared to explain them in more detail. In that case, it will nevertheless be necessary to state clearly which passages require clarification.
46. ACM cannot anticipate forthcoming legislation and operates within the prevailing legal framework. If new legislation requires an adjustment to the method, ACM will of course include this in the decisions. Furthermore, interim changes will only be made to the method if they are justified by unforeseen circumstances, the effects cannot be solved through the tariff decisions and it is not possible to wait until the next regulatory period.
47. ACM has endeavored to align the method as far as possible with the method used in the first regulatory period. In so doing, ACM strives as far as possible to use the data and information held in the records of the utility companies themselves. ACM therefore expects that the utility companies' administrative burden will not increase substantially and may even decrease.

Conclusion on the opinion

48. This opinion has not led to a change in the method decision as compared to the draft method decision.

Opinion 10: "The method takes insufficient account of reliability and sustainability and is focused excessively on short-term benefits for the consumers."

Respondents	Does it lead to a change in the method?
STUCO	No

Summary of opinion

49. STUCO believes that the regulation by ACM is aimed principally at affordability for the end-user. As examples, STUCO cites the removal of investments from the RAB (regulatory asset base) and costs from the tariff calculation, as well as the choice of 50% as the profit-sharing percentage. STUCO states that this is at the expense of the equally important goals of reliability and sustainability. According to STUCO, the focus on the short-term benefit for the end-user leads to a medium- and long-term risk to the continuity of the utility company.

ACM's response to the opinion

50. ACM does not see how the profit-sharing system, in which the tariffs follow the utility company's actual costs on a t-2 basis, leads to medium- and long-term risks to the continuity of the regulated utility companies. ACM also believes that the regulation model as presented in the new regulation method strikes a proper balance between the interests of affordability, reliability and sustainability. Below, ACM addresses the substance of STUCO's opinion and the examples that it cites.
51. ACM considers that the regulation does indeed contribute to the goals of reliability and sustainability. In order to achieve these goals, ACM gives STUCO certainty – by means of the regulation method – on the cost-of-capital remuneration of new investments. By basing the RAB on the historical cost of STUCO's own investments, ACM creates a mechanism in which the investments financed by STUCO (which are deemed to contribute to the reliability and sustainability of the energy supply on St. Eustatius) lead to remuneration. That remuneration

consists of the depreciation of the invested assets and a reasonable return, so that STUCO can earn profit on the invested capital. By basing the tariffs each year on the most recent estimate possible of the company's out-of-pocket costs, ACM prevents a long-term risk to the continuity of the utility company.

52. In the response to opinion 20, ACM further explains why it considers that the profit-sharing system does not pose major risks to the utility companies. ACM also explains the basis for the 50% profit-sharing rate in its response. In the response to opinions 12 and 15, ACM explains why it sometimes makes adjustments to the actual investments and costs when they are used to estimate future costs. ACM believes these adjustments will not lead to utility companies receiving insufficient remuneration through the tariffs. These adjustments are intended to prevent the end-user paying too much. By including major events in the cost estimate, ACM creates space for investments in tariffs, for example investments that contribute to security of supply and sustainability. Finally, ACM believes that the choice of a longer regulatory period contributes to the certainty that utility companies have of future remuneration covering their costs and investments.

Conclusion on the opinion

53. This opinion has not led to a change in the method decision as compared to the draft method decision.

5 Opinions on the method of regulation

54. In this section, ACM considers opinions relating to Chapter 5 of the draft method decision. As this is a large chapter, ACM breaks down the answer to the opinions on the basis of a number of underlying subjects in this chapter.

5.1 Opinions on the length of the regulatory period

55. In this section, ACM deals with the opinions relating to section 5.1 of the draft method decision.

Opinion 11: “A 10-year regulatory period is too long”

Respondents	Does it lead to a change in the method?
ContourGlobal	Yes
STUCO	Yes
WEB	Yes

Summary of opinion

56. The draft method decision provides for a regulatory period of 10 years. ContourGlobal would prefer a much shorter regulatory period, preferably three years and a maximum of five years. The reasons for this are that the WACC decision applies for three years, the method decision in the European Netherlands is limited to five years and the draft method decision contains new aspects that have not yet been tested in practice. ContourGlobal believes it would be better to have a clear picture of the consequences of the current regulation method for the local market before committing to a 10-year method.
57. Marginal 28 states: “the method applies for a period of between three and ten years”. To STUCO it is not clear how it should interpret this comment, in relation to marginal 2, in which ACM states that the method applies from January 1st, 2020 up to and including December 31st, 2029. STUCO also believes that a 10-year period is too long for the second regulatory period. It foresees various circumstances in which an adjustment to the methodology would benefit the company. STUCO refers first to court judgments. It is expecting a judgment in the judicial appeal concerning the 2017 tariffs. Secondly, STUCO refers to legal changes, more specifically the planned legislative changes that could come into force on January 1st, 2021. Thirdly, STUCO refers to changes in the business environment, including changes in the customer base, a change of key suppliers, changes in the capital structure and economic developments. Finally, STUCO refers to changes in technology, for example developments in renewable energy. Shorter regulatory periods would allow faster adaptation to these developments.
58. STUCO would like to know how ACM believes a 10-year regulatory period would benefit the utility company. It notes that no regulatory period in the European Netherlands has ever been longer than five years.
59. Finally, WEB also has a marked preference for a three-year regulatory period. It gives various reasons for this. First, it refers to the forthcoming change in the law, which may require the method to be adjusted. It then refers to the judgment in the judicial appeal against the 2017 tariffs, which is expected in September. WEB refers to the fact that it operates in an unstable environment, the island is growing and there are plans to increase sustainability. Decentralized generation is also

on the rise and WEB is unclear how this will develop. Finally, WEB states that profit-sharing will be applied to distribution for the first time in the second period. These circumstances require flexibility, for which a three-year period is more appropriate, according to WEB. WEB believes workload is no problem; if the method proves correct, WEB says it can then easily be 'copied' to a new period.

60. The fact that the method is a policy rule from which derogations are possible provides no comfort according to WEB. WEB sees this as a 'right of initiative' on the part of ACM, on which the company would be too dependent. WEB notes in this regard that no regulatory period exceeding five years has ever been set in the European Netherlands, and the five-year period has not yet been evaluated.

ACM's response to the opinion

61. In the opinions, the utility companies refer to a number of arguments as to why a 10-year period would be too long. CONTOURGLOBAL, WEB and STUCO all draw a parallel here with the regulatory period in the European Netherlands, which is a maximum of five years. The maximum of five years in the European Netherlands results from the legal framework, which specifies that a regulatory period cannot be longer than five years. This is in contrast to the legal framework for the Dutch Caribbean, which provides for a maximum of 10 years. The fact that different choices can therefore be made in both situations is a logical consequence of the different frameworks in which ACM is required to make its choices.
62. A further factor is that the method decisions in the European Netherlands result in x-factor decisions, in which the permitted revenues for the years in the regulatory period are largely determined in advance of that period on the basis of the companies' historical costs. This is in contrast to the practice in the Dutch Caribbean, where the method is only entered in the tariff decisions on the basis of the costs in the most recently closed financial year. Only the WACC is entered previously on the basis of financial market data, but ACM determines this for a period of just three years, so the parallel with European Netherlands does not hold up.
63. CONTOURGLOBAL and WEB also state that the new method contains a number of new aspects that must be tested in practice before being fixed for a longer period. CONTOURGLOBAL does not define these aspects in detail. WEB refers to the profit-sharing that is being applied to distribution for the first time in the second period. ACM notes that the method is broadly very similar to the method for the first regulatory period. Several features of the method have been refined or further specified as a result of the experiences that ACM gained with this method in the first regulatory period. Since the method is therefore broadly similar to the previous method, ACM considers the second regulatory period to be a suitable time to fix it for a longer period. The specific fact that the profit-sharing has not previously been used for the distribution tariffs does not make any difference. ACM has now gained experience of profit-sharing for the production prices. It will of course also include the utility companies in the precise design of the profit-sharing for the distribution tariffs in the tariff decisions to make sure this is dealt with correctly. ACM sees no reason here to fix the method for only three or five years.
64. WEB and STUCO also both refer to the judgment in the judicial appeal on the 2017 tariffs and the intended legal changes as a reason for applying a shorter regulatory period. ACM notes that both the judgment and the intended legal changes are expected fairly shortly. Even if ACM opted for the minimum term of three years, this means they may take place during the regulatory period. The use of a shorter regulatory period therefore does not alter the fact that a derogation from the

method may be necessary if the judgment or a legal change means certain aspects can no longer be applied. ACM will of course take this into account when applying the method in the tariff decisions. ACM sees no reason here to fix the method for only three or five years.

65. Finally, WEB and STUCO refer to the changing circumstances in which they operate as a reason for using a relatively shorter period. WEB points to the unstable environment, the growth of the island, the sustainability plans and decentralized generation. STUCO cites changes in the business environment, customer base, key suppliers, capital structure, economic developments, and changes in technology, such as renewable energy. ACM notes that where these developments have consequences for utility companies' costs and volumes, this is already taken into account in the method because each year the tariff decisions are completed on the basis of the data from the most recently closed financial year. ACM also took account of new developments in the first regulatory period, including in the product mix and the companies' volumes. Specifically for the WACC, ACM also applies a shorter period, to take account of developments in the financial markets and the utility companies' risk profile.
66. ACM believes that fixing the method for a longer period provides more stability for regulation. If the method is fixed for a longer period, the companies will also become more familiar with it, and with the effects and incentives based on it. For that reason ACM is specifying the method for a longer period than in the first regulatory period.
67. However, based on the opinions, ACM has concluded that there is insufficient support for a 10-year regulatory period. It has therefore decided to apply a shorter regulatory period than 10 years, namely six years. This change therefore (partly) meets the companies' objections. A further advantage of a six-year period is that the WACC applies for three years, so it only has to be updated once within the period.

Conclusion on the opinion

68. This opinion has led to a change to the method decision as compared to the draft method decision. In the method decision, ACM is adjusting the argumentation for the length of the regulatory period and replacing the previously announced 10-year period with a six-year period.

5.2 Opinions on the determination of the tariffs

69. This section deals with the opinions relating to section 5.2 of the draft method decision. Since this is a large section, ACM breaks down its response to the opinions into a number of underlying subjects.

5.2.1 Determining the cost base (including fixed and variable costs)

Opinion 12: "ACM should not make any adjustments to the actual costs when determining the regulatory cost base."

Respondents	Does it lead to a change in the method?
SEC	No
STUCO	No
WEB	No

Summary of opinion

70. It follows from the method that ACM can also make adjustments to the costs, for example if not all the costs incurred by the utility company are necessary for the performance of the utility company's statutory tasks. SEC wonders why ACM does not include certain costs and precisely where the boundary lies. Does ACM include wage costs, for example? ACM may also calculate depreciation differently than the utility companies. SEC believes this conflicts with the position that ACM does not wish to step into the shoes of the company's management.
71. In marginal 73, STUCO reads a proposal by ACM to omit incidental costs from the cost base. STUCO states that in the environment in which it operates, with natural disasters occurring regularly, unexpected, unbudgeted operating costs regularly arise. Whether these costs are incidental appears to be at the discretion of ACM. The exclusion of such costs could adversely affect the sustainable continuation of business operations and, by extension, the utility company's ability, as the sole provider, to serve the residents of Sint Eustatius.
72. WEB states that it understands the comments made in the method decision concerning incidental costs. It believes they are consistent with the points that it raised during the tariff rounds. ACM usually classified costs as incidental costs, even though they might simply be efficient costs. WEB does state, however, that the adjustments described in marginal 68, which ACM can apply to the costs, give ACM excessive power. These adjustments also negate the principle of staying closer to the costs from year $t-2$. WEB believes this contradicts the basic principle of being able to recoup costs and leads to uncertainty for investors.

ACM's response to the opinion

73. SEC wonders why ACM does not always include all of the utility company's costs when determining the cost base. In marginal 68 of the draft method decision, ACM explains that it will remove from the cost base any costs that do not relate to the statutory tasks to which the tariffs apply. ACM does this to prevent remuneration being paid through regulated tariffs for non-tariff-regulated services or activities. If a utility company, for example, incurs costs for the collection of household waste, this service must not be remunerated through the tariff for electricity or drinking water. This would amount to cross-subsidization between tariff-regulated and non-tariff-regulated activities. For this reason, ACM will sometimes net other revenues against the company's costs. If the actual costs of a particular activity are not known, ACM will take the revenues from that activity as a proxy for the costs. By deducting these from the costs in the cost base, ACM can thus prevent excessively high tariffs for the regulated services (electricity and drinking water).
74. In marginal 73 of the draft method decision, ACM outlines the difficulty of estimating incidental costs. STUCO's opinion confirms the difficulty outlined by ACM. In the following marginal, ACM therefore proposes a change as compared to the first regulatory period. In principle, ACM will not remove incidental costs from the cost base so quickly. ACM sees WEB's opinion as providing support for this change, although WEB does state that in marginal 68 ACM gives itself excessive power to adjust costs. With regard to the reasons ACM has for making possible adjustments to the costs, as described in marginal 68, ACM refers to the additional explanation of this point in marginals 73 and 78 of this opinion annex.
75. ACM is aware of the susceptibility of the Caribbean area to natural disasters. Natural disasters are unpredictable and have major financial consequences for the utility companies. ACM

acknowledges this risk in its draft method decision. ACM cannot estimate the resulting costs under the heading of incidental costs, but it can include them under force majeure.

Conclusion on the opinion

76. This opinion has not led to a change in the method decision as compared to the draft method decision.

Opinion 13: “ACM should not deduct extra revenues other than tariff revenues from the costs.”

Respondents	Does it lead to a change in the method?
SEC	No

Summary of opinion

77. SEC states that ACM deducts extra revenues other than tariff revenues from the costs and considers this is unreasonable. Why would SEC generate extra revenues if it is penalized for it with lower tariffs in the following year? According to SEC, the same applies to the fact that ACM can adjust provisions.

ACM's response to the opinion

78. When SEC generates revenues in excess of the revenues it already has from the regulated tariffs, the underlying costs are actually being reimbursed twice. In the situations referred to by SEC, this occurs as follows. When SEC generates revenues from providing advisory services for other companies, but the wage costs of the employees providing these services are included in the regular cost base (OPEX), this leads to double reimbursement: SEC has revenues from the provision of services, but the wage costs of the personnel are already being reimbursed from the regulated tariffs (that are based on all costs incurred by SEC). The same applies to rental revenues, for example from the rental of office premises included in the regulatory asset base. The rental revenues are duplicated, because the capital cost of the offices in question is already part of the cost base that is covered as a whole by the tariffs. In order to prevent double reimbursement, ACM deducts these additional revenues from the total cost base. ACM assumes that the revenues obtained from the additional activity are in line with the actual costs of this activity. If it sees utility companies entering into contracts on an uneconomic basis, or providing non-regulated services far below the economic cost, it may conduct a more detailed investigation.

79. With regard to the possibility of adjusting provisions when determining the regulatory cost base, ACM refers to marginal 71 of the draft method decision. ACM will include provisions if it considers that these are a good benchmark for the future costs. In past years, however, ACM has ascertained that the extent of the movement in the provisions is often not a good estimator of all kinds of one-off adjustments, or accounting choices. ACM is therefore keeping open the possibility of assessing this on a case-by-case basis.

Conclusion on the opinion

80. This opinion has not led to a change in the method decision as compared to the draft method decision.

Opinion 14: “ACM should include interest costs in determining the regulatory cost base.”

Respondents	Does it lead to a change in the method?
STUCO	No

Summary of opinion

81. STUCO believes the cost of financing by third parties, particularly interest costs, is unclear. Since interest costs are a normal part of the cost structure of most companies, STUCO would like ACM to include these costs when determining the maximum tariffs. This consideration is important to STUCO, since in the future it may need financing by third parties in order to expand the utility company.

ACM's response to the opinion

82. ACM shares STUCO's conclusion that interest costs are a normal part of the cost structure of most companies. Interest costs are part of a company's financing costs. ACM compensates for the financing cost by applying a return to the value of the regulated asset base. This return is the WACC. The WACC is a weighted average of the loan capital remuneration (interest costs) and the equity remuneration. The WACC calculation is an annex to the method decision.

Conclusion on the opinion

83. This opinion has not led to a change in the method decision as compared to the draft method decision.

Opinion 15: "ACM must include the cost of capital of donated assets in the regulatory cost base."

Respondents	Does it lead to a change in the method?
STUCO	No
WEB	No

Summary of opinion

84. In marginal 68 of the draft method decision, ACM states that the value and depreciation of assets may be calculated differently than the value and depreciation recorded in the utility companies' financial statements. ACM applies the principle that assets are recognized at cost in the regulatory asset base. Any remuneration received is deducted from the capitalized expenditure. STUCO believes that omitting donated assets in the regulatory asset base leads directly to deflation in the actual depreciation costs and deflation in the WACC return on the investments. In STUCO's opinion, this contravenes the law, which states that the actual production costs must be considered when setting the tariffs. STUCO believes ACM's position denies its ability to maintain itself in the future.

85. WEB refers to the fact that in the Dutch Caribbean there is no guarantee that the subsidy can be repeated in order to replace subsidized assets. Obtaining finance is a challenge, but including the cost of capital in the case of a donated asset enables companies to build up capital to replace donated assets. Moreover, according to WEB, it is possible that an entirely new situation will arise due to force majeure (such as a hurricane). In such a case, WEB must remain able to conduct a sound financial policy and the deduction of remuneration may conflict with this. Hence, there may be cases in the Caribbean situation in which the inclusion of CAPEX for donated assets is nevertheless correct.

ACM's response to the opinion

86. ACM bases the tariffs for the utility companies on the (efficient) costs actually incurred by the companies. To determine these costs, it is necessary to determine the value of the assets allocated to various areas. ACM refers to this asset value as the regulatory asset base (RAB).
87. ACM bases the RAB on information supplied by the companies themselves. It looks at the historical cost of the assets. If a subsidy has also been granted for the purchase of the assets concerned, ACM will deduct this subsidy from the historical cost. After all, if a subsidy has already been granted to cover the costs associated with the assets concerned, these costs should not be covered again by the tariffs. This would lead to duplicated cover of the actual costs. That would obviously be contrary to the legislature's intention with regard to the subsidy previously granted to STUCO, namely a decrease in the total costs to be charged to end-users as compared to the situation without a subsidy.⁹ The parliamentary history shows that the legislature intended the subsidy to prevent residents having to pay for the transition to sustainable energy through their tariffs. The aim of the subsidy is precisely to keep costs low.¹⁰ Of course, if the subsidy is smaller than the total (efficient) costs of the assets, the surplus costs are included in the setting of the tariff.
88. In the judicial appeal against the 2017 production prices, STUCO stated on this point that subsidies could be treated in two different ways under the accounting rules.¹¹ The first method involves deducting the subsidy from the acquisition cost stated in the accounts. The second method treats the subsidy as a prepayment received and releases part of it annually against the depreciation costs. ACM notes that if the subsidy is equivalent to the acquisition cost, the net costs in both cases are zero, because if the first method is used, the book value is zero and there are no costs. In the second case, the (gross) depreciation costs are eliminated against the release of the subsidy, and there are no net costs. ACM therefore also sets the RAB at zero, as the company has already been compensated for the costs through the subsidy.
89. The position of STUCO and WEB on this matter is also a subject of STUCO's current proceedings with regard to the 2017 production prices, where STUCO is primarily arguing for the depreciation costs to be reimbursed through the tariffs. From the current opinion, however, ACM understands that STUCO believes it should also receive a reimbursement of the WACC on the donated assets. As in the case of the argument concerning depreciation, ACM cannot concur with this view. The WACC is intended to determine the cost of capital that a company should incur to obtain loan capital or equity. This case, however, concerns assets paid for by means of a subsidy. The utility company does not therefore have to raise any capital for this itself, so there is no cost of capital.
90. ACM understands the utility companies' desire to build up a reserve to replace assets built with a subsidy, in the same way as other companies wish to build up reserves. ACM believes, however, that the means proposed by STUCO and WEB, namely reimbursing the cost of capital of donated assets, is inconsistent with ACM's task, and also leads to undesirable effects. After all, ACM's task is to base the tariffs on the actual (efficient) costs, whereas the proposal of STUCO and WEB leads to excess coverage of the actual costs. This excess coverage would have the aim of building up a reserve for the future replacement of assets, whereas in practice it is still unclear how future

⁹ *Kamerstukken II 2014/2015*, 34 089, no. 3, p. 15.

¹⁰ *Kamerstukken II 2014/15*, 34 089, no. 6, p. 12 and p. 15.

¹¹ For the sake of completeness, ACM refers to section 5.5 of its statement of defense of December 3rd, 2018 concerning the judicial appeal against the 2017 production price decisions for STUCO.

replacements will be financed. This is therefore speculative remuneration for future costs that are still unclear.

91. ACM furthermore notes that companies can also recoup future replacement investments through the tariffs if they have to finance these themselves. In that case, the system reimburses depreciation and capital costs, and the companies can also offer a return to potential capital providers.

Conclusion on the opinion

92. This opinion has not led to a change in the method decision as compared to the draft method decision.

Opinion 16: “ACM must improve the way it formulates and explains the working method for splitting fixed and variable costs.”

Respondents	Does it lead to a change in the method?
WEB	Yes
SEC	No

Summary of opinion

93. WEB understands the need to split the fixed and variable costs. It notes, however, that a number of points are still not well formulated. WEB can obtain a clear picture of the way in which costs in year $t-2$ are split into fixed and variable by labelling the different cost types as variable or fixed. The description of how this is done for the actual figures in year t is insufficient, however.
94. WEB can imagine that a reallocation of cost types will be made for the actual costs. WEB also learned from the discussions with ACM, however, that it wishes to use a certain percentage, which it would set for a longer period. WEB suspects that this will be difficult in practice, because a rise in volumes will also change the ratio of variable to fixed costs. The percentage must then be adjusted in each case. WEB would therefore prefer to carry out an allocation to cost types for each concluded year.
95. In its oral opinion WEB also requested that the potentially confusing term ‘volume driver’ be replaced by ‘tariff basis’. WEB has also stated that the use of the correct volumes is very important for the correct implementation of the volume correction. In this connection, WEB also requests that the description of the volume estimation, as included in marginal 100 of the draft method decision, be clarified.
96. SEC asks why the fixed costs must be calculated on the basis of the volume (of variable costs).

ACM's response to the opinion

97. ACM is working towards splitting fixed and variable costs to take account of the effect of volume growth in the volume correction. All islands in the Dutch Caribbean are seeing steady, substantial growth in volumes, so ACM needs to ensure that the regulation takes sufficient account of it. The same applies to volume decreases.
98. WEB correctly states that the precise splitting method has not been formulated in detail in the draft method decision. Although ACM wishes to define the method as specifically as possible, that is not yet possible. In the data requests sent out in June, ACM requested the utility companies to

submit a proposal on possible ways of splitting costs into a fixed and variable part. The options referred to by WEB (allocation based on cost type or allocation based on percentages) are both realistic possibilities. A combination of both options is also possible, and the chosen option may differ from company to company. On the basis of the utility companies' proposals, ACM will choose a method and explain both the method and its reasoning in the tariff decisions for 2020.

99. ACM agrees with WEB that it is not necessary to introduce the term volume driver. What is actually meant can already be described sufficiently clearly as a tariff basis. ACM also acknowledges that the description in marginal 100 of the draft method decision may lead to confusion, so ACM will clarify this description.
100. ACM assumes that the improved descriptions in marginal 100 and marginal 101 will also answer the question from SEC. The reason why ACM wishes to have an estimate of the volume in order to set the tariffs, is that the fixed costs do not move in line with this volume. As a result of dividing the expected fixed costs for the forthcoming tariff year by the expected volume, the tariff headroom per unit (kWh or kVA, for example) is as close as possible to the actual costs in that year. ACM thus avoids a large post-calculation in the subsequent volume correction for that year.

Conclusion on the opinion

101. This opinion has led to a change to the method decision as compared to the draft method decision. In the text of the method decision ACM is replacing 'volume driver' with 'tariff basis'. ACM is also clarifying how it deals with the estimation of volumes in marginal 100 and marginal 101 of the method decision.

Opinion 17: "Provisions can be included in the regulatory cost base."

Respondents	Does it lead to a change in the method?
WEB	No

Summary of opinion

102. WEB emphasizes that it wants to be in a situation where the costs relating to provisions in the profit and loss account are included on a like-for-like basis in the cost base. The costs are not determined on the basis of a 'high over' arbitrary percentage. WEB assumes that a degree of stability has now been achieved so that the actual cost of provisions forms an appropriate basis for the tariffs.

ACM's response to the opinion

103. ACM understands WEB's desire to incorporate the movement in provisions in the setting of the tariff if it is the best estimator of future (efficient) costs. This does nevertheless require a degree of stability in the cost determination, which WEB acknowledges in its opinion. The extent to which it is desirable to incorporate the movement in provisions as an estimator of future costs will therefore differ from case to case. ACM will continue to look critically at this point. It will also keep this option open in its description in marginal 71 of the method decision. Here ACM states that if the movements do not provide a good estimate, it may replace movements in the provisions with an estimator that is more in line with the expected future costs. However, if the movements in the provision do constitute the best estimator of future costs, ACM may include these in the cost base.

Conclusion on the opinion

104. This opinion has not led to a change in the method decision as compared to the draft method decision.

5.2.2 Assessment of major events

Opinion 18: "The criteria for assessing 'major events' are unclear."

Respondents	Does it lead to a change in the method?
STUCO	No
WEB	No
SEC	No

Summary of opinion

105. ACM is introducing the term 'major event' for the second regulatory period. To STUCO it is unclear what 'major' means and it believes it leaves a lot to the discretion of ACM.

106. In WEB's view, the introduction of 'major event' is consistent with the principle that a company must be able to recoup its costs (provided it does so efficiently). WEB refers to the fact that since the costs of year t-2 form the basis of tariff year t, a mismatch of revenues and expenditure may arise in a particular year. WEB believes it is important to make this estimate as accurate as possible. In WEB's opinion the 'major event' is a good step in this direction, as long as it applies to both OPEX and CAPEX. It does, however, have difficulty with the term 'major'. In practice there may also be less substantial items which, perhaps cumulatively, may lead to undesirable and irresponsible mismatches. WEB believes that clear developments should also be included in order to obtain the best possible estimate, even if they are less substantial.

107. SEC does not understand why ACM is becoming stricter with regard to the inclusion of future developments in the costs. These are easier to predict than incidental costs.

ACM's response to the opinion

108. It is true that ACM has not recorded in quantitative terms what 'major' means. ACM considers that undesirable, as the assessment of a 'major event' not only concerns the financial impact but also includes impact on the development of volumes, any expansion of the service offering or the supplied quality, and the resulting changes for business operations. Effects that (almost) exclusively concern the development of volumes are expressly not deemed to be major events, since ACM already takes account of regular volume growth in a different way in the tariff regulation. The same applies to cost developments as a result of general price rises. It is also important that the event is sufficiently certain and predictable, because otherwise the effects cannot be properly included in the estimates for the forthcoming tariff year. Due to these different characteristics, it is not possible to formulate a conclusive set of criteria in advance as a basis for designating an event as 'major'. It is therefore correct that the term 'major' has not been conclusively defined. Depending on its nature, the qualification of an actual event as a 'major event' must be determined on a customized basis. ACM must therefore assess whether it is 'major' on a case-by-case basis. ACM thus remains within the discretion afforded to it for the determination of the method.

109. ACM does not agree with SEC that the regulation on the inclusion of future developments is becoming stricter. It is nevertheless the case that, for example, investments relating to an

expansion of the volume are generally no longer qualified as major events, because they are included in the cost estimate in a different way (through the variable costs in the volume correction).

110. As also stated in the draft method decision, ACM will in all cases assess whether and why a particular event should be seen as ‘major’ and how this is reflected in the estimates that ACM makes. ACM will always justify this in the tariff decisions. In the event of a difference of opinion on this matter, the utility companies may also file an administrative appeal against these tariff decisions. ACM also stresses again that the utility companies themselves are responsible for supplying the information that ACM should include in its assessment.

Conclusion on the opinion

111. This opinion has not led to a change in the method decision as compared to the draft method decision.

Opinion 19: “It is unclear whether force majeure counts as a major event”

Respondents	Does it lead to a change in the method?
SEC	No

Summary of opinion

112. To SEC it is unclear whether a hurricane counts as a major event or force majeure.

ACM’s response to the opinion

113. By major events ACM means developments that can be foreseen and assessed in advance by the utility company. Any costs arising, for example due to damage caused by a hurricane, are not included here, of course, because it only becomes clear afterwards whether they will occur, and what the effects will be. However, a hurricane may be a reason to adjust the tariffs on the basis of force majeure. It is also possible that the costs incurred subsequently due to a hurricane will be included as a major event in the setting of the tariffs.

Conclusion on the opinion

114. This opinion has not led to a change in the method decision as compared to the draft method decision.

5.2.3 Application of profit-sharing and other retrospective corrections

Opinion 20: “ACM should choose a higher profit-sharing percentage so utility companies incur less risk.”

Respondents	Does it lead to a change in the method?
STUCO	No
WEB	No

Summary of opinion:

115. ACM has opted to continue the chosen profit-sharing allocation of 50%-50% in the second regulatory period. STUCO notes that ACM has never explained why it chose a percentage of 50%.

Furthermore, it considers that a less drastic allocation of 85%-15% or 80%-20% would support the desired goal of cost efficiency, without jeopardizing the utility company's financial position over the longer term.

116. WEB considers that a percentage of 50% for profit-sharing poses a high risk of excess or inadequate coverage. WEB believes the risk of inadequate coverage to be irresponsible and disproportionate to the efficiency goal. According to WEB, the estimation method leads to a high probability of a difference as compared to the actual figure, so a percentage should be chosen that takes greater account of the ability to recoup costs. WEB proposes post-calculating 75% of the difference, taking the method closer to cost-plus.

ACM's response to the opinion

117. First, ACM wishes to emphasize that the financial risks of insufficient or excess coverage that utility companies incur as a result of tariff regulation are limited, since the system that ACM refers to as 'profit-sharing' does not only consist of the choice of a percentage for the allocation of differences between expected and actual costs (both including a reasonable return). In addition to this percentage, all kinds of other choices are important in terms of the extent to which the utility companies incur risks. For all these other choices ACM has always opted for the variant that places the least risk on the utility company. To illustrate this, ACM explains below how the main choices help to limit the financial risk for the utility companies.

118. ACM already limits the financial risk for the utility companies to a large extent as follows:
- So as to estimate the cost as well as possible, ACM always uses the utility company's out-of-pocket costs (with the exception of the reasonable return). Any setbacks are thus reincorporated in the costs that ACM uses to estimate future tariffs. By comparison, in the European Netherlands it is usual to estimate the expected costs on the basis of the costs of other utility companies, so the out-of-pocket costs only impact a company's revenues to a limited extent.
 - In order to estimate the costs as accurately as possible, ACM uses the most recent cost data available each year, thereby minimizing the delay between actual costs and the estimate for the forthcoming year. This delay is considerably smaller than in case of network operators in the European Netherlands.
 - ACM applies a correction to take account of developments in volume (both rises and falls). This volume correction is more accurate from the second regulatory period because ACM deals with the fixed and variable costs in a different way.
 - ACM tries to take account of major events affecting the utility companies' costs. This helps ensure an accurate assessment.
 - Finally, ACM always has the possibility of adjusting tariffs for reasons of force majeure, and in that way eliminating any risks for the companies.

119. The above choices show that ACM tries its utmost to estimate costs accurately. ACM thus endeavors to minimize the difference between the estimated and the actual costs. The application of the profit-sharing then relates solely to the difference between estimated and actual costs. The utility company may retain 50% of this difference if it is positive, and is compensated for 50% if the difference is detrimental to the company.

120. The choice of 50% is based on the rationale that the utility companies and their end-users will share the remaining risks equally. ACM sees no reason to place more risk on the end-users than on the utility companies.

Conclusion on the opinion

121. This opinion has not led to a change in the method decision as compared to the draft method decision.

Opinion 21: “ACM should also apply profit-sharing to doubtful debts.”

Respondents	Does it lead to a change in the method?
SEC	Yes
WEB	Yes

Summary of opinion

122. ACM does not apply any profit-sharing to doubtful debts. According to SEC, ACM has thus decided that the disadvantages of underperforming must be borne by the utility companies. SEC finds the rationale for this unclear, and unworkable.

123. WEB finds it remarkable that no profit-sharing will apply to the costs of doubtful debts. It is unclear why a stronger incentive should apply to this item, and the production of an accurate estimate thus takes on greater significance. WEB therefore calls for this item to be included in the profit-sharing.

ACM's response to the opinion

124. Whereas most costs are based on the actual figures in year t-2, the level of the doubtful debts cost item is in principle determined on a normative basis. Hence, there is already a stronger incentive to achieve this standard. This effect is further reinforced if these costs are not included in the profit-sharing. ACM understands that the utility companies consider this incentive to be disproportionately strong and has decided on the basis of the opinions to include doubtful debts in the profit-sharing. The possibility that ACM can apply a standard to the level of expected doubtful debts in estimating the costs remains unchanged.

Conclusion on the opinion

125. This opinion has led to a change to the method decision as compared to the draft method decision. The change can be found in section 5.2, step 4, of the method decision.

Opinion 22: “It is unreasonable that ACM has the power to withdraw allocated tariff headroom retrospectively.”

Respondents	Does it lead to a change in the method?
SEC	No

Summary of opinion

126. SEC states that ACM can post-calculate part of the previously permitted revenues and apply a correction to them in the form of deductions from the tariffs in the subsequent year. SEC argues that ACM can cream off profits if ACM considers them unfair. SEC believes this provision is one-sided and conflicts with marginal 6 of the draft method decision. It promotes uncertainty and totalitarianism, according to SEC.

ACM's response to the opinion

127. In marginal 116 of the draft method decision ACM states that it can post-calculate previously allocated revenues in connection with major events if the activities for which these extra revenues were allocated were not performed or were delayed. ACM clearly states that this power will only be used in exceptional situations where a utility company expected to incur costs for a major event that was accepted by ACM but ultimately did not take place. In this situation, the utility company would therefore receive additional revenues with no corresponding costs. This power is not intended to cream off profits, and nor does it replace the profit-sharing mechanism. ACM also believes this power is not one-sided; it is actually a counterpart of the 'force majeure' situation described in marginal 115 of the draft method decision.

Conclusion on the opinion

128. This opinion has not led to a change in the method decision as compared to the draft method decision.

Opinion 23: "Special treatment in the application of profit-sharing to network losses."

Respondents	Does it lead to a change in the method?
STUCO	No
WEB	No

Summary of opinion

129. In marginal 114 of the draft method decision ACM describes a number of cost items for which there is special treatment in the profit-sharing. According to STUCO, ACM identifies the costs of network losses as costs that must be omitted from the profit-sharing. Since network losses are inherent in the production and distribution of electricity and drinking water and, to a certain extent, remain constant in the absence of major investments (which ultimately lead to higher depreciation costs), STUCO does not fully understand why these costs are omitted, particularly since STUCO's actual costs are often far below the benchmark indicators of non-revenues in the region or even around the world.

130. WEB believes that network losses should be subject to the higher percentage that it proposed in the profit-sharing (75%). The item is volatile, substantial and difficult to predict.

ACM's response to the opinion

131. The level of the network losses depends partly on the utility company's investments and maintenance in its network. The utility companies can thus influence the level of network losses to a certain extent. ACM considers it unreasonable to require end-users to shoulder all the costs of inefficiency in this area, or to make the utility companies bear all the risk. For this reason, ACM stated in the draft method decision that the costs of network losses would be part of the profit-sharing. ACM sees no reason for a different profit-sharing percentage and therefore applies a rate of 50%.

Conclusion on the opinion

132. This opinion has not led to a change in the method decision as compared to the draft method decision.

Opinion 24: "When applying a volume correction, ACM must take account of the effect of setting a subsidy as a total amount that does not rise in line with volumes."

Respondents	Does it lead to a change in the method?
WEB	Yes

Summary of opinion

133. WEB raises the matter of the effect of subsidies. The tariff subsidies of the Ministry of Economic Affairs and Climate Policy and the Ministry of Infrastructure and Water Management are absolute amounts. They are based on the volumes used by ACM in the tariff decisions. These amounts do not move if the actual volume is higher than the volume on which the tariffs are based. As a result, the extra revenue due to higher-than-expected volume is not based on the tariffs set by ACM, but only on the net tariffs set by WEB (ACM tariffs minus discount as a result of subsidy). These amounts are reduced, however, if the actual volume is lower than the tariff decision. WEB requests that this effect be addressed.

ACM's response to the opinion

134. ACM understands that the amount of the subsidy is set and paid out on the basis of estimated volumes. The fixed-use tariffs are set taking this subsidy into account. There is a risk of inadequate coverage of the costs in the utility companies. When applying the volume correction, ACM looks at the difference between the estimated and actual volumes. ACM shares WEB's conclusion that extra revenues due to higher volumes will not necessarily be equal to the tariffs set by ACM. ACM considers it reasonable to take this into account and is making an addition to the method decision for this situation.

Conclusion on the opinion

135. This opinion has led to an addition to the description of the volume correction in the method decision as compared to the draft method decision. The change can be found in section 5.2, step 4, of the method decision.

5.2.4 Other items

Opinion 25: "Can the utility company itself carry out the breakdown into technical categories?"

Respondents	Does it lead to a change in the method?
SEC	No

Summary of opinion

136. SEC wonders whether it is permitted to carry out the breakdown into technical categories itself.

ACM's response to the opinion

137. In the tariff proposal, SEC, as a distributor, can propose which (technical) categories it wishes to apply. Within a tariff category, the distributor may charge different tariffs for different groups of end-users, provided the distinction is justified by the costs that the utility company incurs for those specific groups of end-users.

Conclusion on the opinion

138. This opinion has not led to a change in the method decision as compared to the draft method decision.

5.3 Opinions on the reasonable return

139. In this section, ACM considers opinions on the method of calculating the reasonable return (WACC method). Although the relevant calculation method was not known at the time of the consultation on the draft method decision, ACM does already have some observations on the WACC. Opinions that ACM has received on the draft WACC method have been included separately in the WACC decision.

Opinion 26: “The WACC should be more closely aligned with the actual situation in which the utility companies operate.”

Respondents	Does it lead to a change in the method?
WEB	No

Summary of opinion

140. WEB believes it would make more sense to have a Caribbean firm carry out the investigation for the WACC. It stresses the need to find references in the Caribbean region and to take the actual costs of loan capital into account in the WACC.

141. WEB believes it must be possible to recoup the cost of capital.

ACM's response to the opinion

142. ACM considers it important when determining the WACC that the consultant takes account of the relevant aspects of the companies, and the activities they perform. It also told the consultant to keep in mind when determining the reasonable return that it relates to companies in the Caribbean region. Given this fact, ACM sees no reason to look specifically for a Caribbean firm to carry out the WACC investigation. What is important is that the consultant conducts a proper investigation into the circumstances in which the companies operate, and what this means for matters such as the composition of the comparison group.

143. In the determination of the WACC for the first regulatory period an explanation was given as to why no suitable comparable companies in the Caribbean region were included. Companies were found to be non-listed, illiquid or performing significantly different activities. This means either that it is not possible to determine a sufficiently accurate beta or that the beta is not sufficiently representative of the activities of the utility companies in the Dutch Caribbean. For the WACC for the second regulatory period the consultant looked again for suitable companies in this region, but again these proved unavailable.

144. To the extent that WEB considers that the actual costs of loan capital must be taken into account, and that companies must recoup these costs, ACM emphasizes that it must set a reasonable return. To this end, on the basis of Article 2.1 of the BES Electricity and Drinking Water Regulation, it looks at the normal economic return. For this purpose ACM must consider the returns on comparable companies and bonds. The company's actual cost of capital may differ from these.

Conclusion on the opinion

145. This opinion has not led to a change in the method decision as compared to the draft method decision.

5.4 Opinions on the energy costs

146. In this section, ACM considers opinions relating to section 5.4 of the draft method decision (concerning energy costs).

Opinion 27: "ACM must be transparent about research into the efficiency of production from wind and solar farms, consult on the outcomes and use the results cautiously."

Respondents	Does it lead to a change in the method?
ContourGlobal	Yes
WEB	Yes

Summary of opinion

147. ContourGlobal expresses concern about the current DNV-GL investigation into the efficiency of production from wind and solar farms. ContourGlobal states that it is not aware of the conduct of this investigation. It has no knowledge of the content and consequences of the investigation for the tariff regulation. ContourGlobal fears that ACM will present the investigation at a particular time, without giving ContourGlobal an opportunity to provide advice or comments on the input and output of this investigation. ContourGlobal requests ACM to draw up a draft research report and to provide an opportunity to respond to this report before it is published.

148. WEB requests ACM to be cautious with the results of an investigation into the efficiency of solar or wind production. According to WEB there may be legitimate reasons why the technical efficiency may differ from the actual efficiency, such as specific local circumstances or curtailing. These factors may be simply efficient and/or unavoidable.

ACM's response to the opinion

149. With the increase in the proportion of electricity generated by renewable energy, ACM believes it is in the interest of end-users that this production takes place efficiently. Such an incentive is lacking in the current regulatory method. No framework has hitherto been developed for it. ACM wishes to investigate the possibilities for developing a framework and understands the companies' interest in such an investigation. For that reason, ACM will give the interested parties an opportunity to respond to the investigation before it is implemented in the regulation.

Conclusion on the opinion

150. These opinions have led to a change in the description of the investigation into the efficiency of solar and wind production in the method decision as compared to the draft method decision. The change can be found in section 5.4 of the method decision.

Opinion 28: "An efficiency incentive in fuel purchases is unworkable and unreasonable."

Respondents	Does it lead to a change in the method?
WEB	Yes

Summary of opinion

151. In marginal 130 of the draft method decision ACM describes a possible efficiency incentive for the purchase of fuels for electricity, namely using a public index of oil prices. According to WEB, the inclusion of this possible efficiency incentive leads to an entirely unworkable situation, as the

fuel market on Bonaire is dominated by a Curoil monopoly. It is not possible for WEB to purchase the fuel in any other way.

ACM's response to the opinion

152. On average, fuel costs make up half of the total costs of electricity producers. Until now, these fuel costs have been reimbursed on a like-for-like basis in the variable use tariff. In view of the proportion of fuel costs in the total costs, ACM would like to introduce an incentive to make the purchasing of fuel as efficient as possible in practice. This will require a more detailed investigation. Within the scope of such an investigation it will also be possible to look at the fuel market on each island, and what restrictions (efficient) companies may face.

Conclusion on the opinion

153. This opinion has led to a change in the description of the investigation into the efficiency of fuel purchases in the method decision as compared to the draft method decision. The change can be found in section 5.4 of the method decision.

Opinion 29: "ACM must explain the role of the production price in an integrated company and how this is passed on in the variable distribution tariff."

Respondents	Does it lead to a change in the method?
SEC	No

Summary of opinion

154. SEC refers to marginal 7 of the draft method decision, which states that the distributor will pay the variable use tariff to the producer to cover the production price. SEC states that as a producer and distributor it cannot charge the production costs to itself.

155. SEC requests clarification. Is it correct that as a producer it can adjust tariffs monthly, but as a distributor only twice a year? This leads to a low level of consolidation, according to SEC.

ACM's response to the opinion

156. As an integrated company that both produces and distributes electricity, SEC will offset internally the price that SEC as a distributor pays to SEC as a producer.¹² This follows from Section 2.5, paragraph 5, of the BES Electricity and Drinking Water Act.

157. The production price that the producer charges to the distributor (an internal transfer price in the case of an integrated company) is set each time for a period of one year. An exception to this follows from Section 2.5, paragraph 3, of the BES Electricity and Drinking Water Act. Instead of a fixed price per year for energy costs, ACM can set a variable component related to the actual monthly oil price. ACM has opted to allow the energy costs to vary on a monthly basis. However, on the basis of Section 3.14, paragraph 6, of the BES Electricity and Drinking Water Act, the variable tariff that the distributor charges to the consumer can only be set by ACM annually or semi-annually.¹³ For this reason, the variable use tariff that the distributors are permitted to charge is adjusted by ACM half-yearly, on January 1st and July 1st.

¹³ Kamerstukken II 2014/15, 34 089, no. 3, p. 9-11.

Conclusion on the opinion

158. This opinion has not led to a change in the method decision as compared to the draft method decision.