



Decision

Our reference : ACM/UIT/523599
Case number : ACM/19/035839

Decision setting the maximum drinking water production price with effect from January 1st, 2020 for:

St. Eustatius Utility Company N.V.

Determination by the Authority for Consumers and Markets of the maximum drinking water production price as referred to in Article 2.5, paragraph 1, of the BES Electricity and Drinking Water Act 2511 WB Den Haag

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This document is an English translation of the Dutch version “Beschikking tot vaststelling van de maximale productieprijs van drinkwater per 1 januari 2020 voor St. Eustatius Utility Company N.V.”. In case of inconsistencies or possible interpretation difference between the Dutch version and this English translation, the Dutch version prevails.

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1 Introduction and reader's guide

1. By means of this production price decision, the Netherlands Authority for Consumers and Markets (hereinafter: ACM) implements Article 2.5, paragraph 1, of the BES Electricity and Drinking Water Act.¹ Under this article, ACM is required, on the proposal of a producer, to set the maximum production price that this producer will charge a distributor for the drinking water it produces.
2. St. Eustatius Utility Company N.V. (hereinafter: STUCO) is the producer of drinking water on St. Eustatius.
3. In this decision, ACM sets the maximum production price that STUCO will charge in 2020 as an internal transfer price for drinking water.
4. This decision consists of a number of chapters. Chapter 2 provides the context of this decision. Chapter 3 sets out the connection with other decisions. Chapter 4 is devoted to legal protection. Chapter 5 sets out successively the costs, the revenues, the application of corrections and the final maximum production price of STUCO. This chapter also states how ACM will deal with any differences between allowed revenues and costs ultimately incurred. This decision also contains three annexes, namely an overview of the main calculated amounts (Annex 1) and two Excel files: the 'Berekening tarieven STUCO 2020' Excel file (Annex 2), and the 'Berekening profit sharing correctie STUCO 2020' Excel file (Annex 3). Annex 2 and Annex 3 are published exclusively on the ACM website (www.acm.nl) and form an integral part of the decision.
5. This decision comes into force on January 1st, 2020.

¹ Law of 23 March 2016, containing rules for the production and distribution of electricity and drinking water on Bonaire, Sint Eustatius and Saba (BES Electricity and Drinking Water Act), *Government Gazette* 2016, 142.

2 Context of this decision

6. The BES Electricity and Drinking Water Act aims to ensure reliable, sustainable and affordable supplies of electricity and drinking water on Bonaire, Sint Eustatius and Saba.² One way of achieving this is the regulation of tariffs.
7. Under Article 2.5, Article 3.9, paragraph 4, and Article 3.14 of the BES Electricity and Drinking Water Act, ACM's responsibilities include setting a maximum production price for electricity and drinking water and maximum distribution tariffs for electricity and drinking water. The production price is charged by the producer to the distributor. The distribution tariffs are charged by the distributor to the end-user (consumers and business customers).
8. Lawmakers have three objectives with the tariff regulation legally entrusted to ACM. The first objective is consumer protection. Because end-users in the Caribbean Netherlands cannot negotiate on the price of electricity or drinking water and because they are not free to choose the company from which they purchase their electricity or drinking water either, the maximum tariffs for these services are set by ACM.
9. The second objective of tariff regulation is to protect investors. A stable and predictable regulation climate enables the company to make the necessary investments in infrastructure and production capacity.
10. The third and final objective is the productive efficiency of the company. This enables services of sufficient quality to be provided at the lowest possible cost.
11. Lawmakers use cost orientation as the starting point in the tariff regulation entrusted to ACM. That means that electricity and drinking water tariffs are based solely on the costs incurred by the company for those services.
12. Producers and distributors of electricity and drinking water have an interest in ensuring that they can recoup the efficient costs (including a reasonable return) that they incur in order to fulfill their statutory tasks. A lack of competition may result in a producer and a distributor operating inefficiently and consequently charging excessively high tariffs. End-users would be disadvantaged in such cases. End-users therefore benefit from the promotion of efficiency in business practice.
13. Lawmakers have therefore entrusted ACM with the task of establishing a regulation system that provides an incentive for both the producer and the distributor to operate as efficiently as companies that do face competition, and to guarantee quality.
14. Because STUCO has a monopoly position on St. Eustatius, ACM is setting, through this decision, the maximum production price per cubic meter of drinking water that STUCO may charge in the 2020 calendar year as the internal transfer price for drinking water.
15. The aim of the regulation system is to prevent STUCO charging an unreasonably high internal transfer price for the production of drinking water.
16. It is also important that STUCO is able to recoup the efficient costs that it incurs in the production of drinking water. If STUCO is reimbursed for its efficient costs (including a reasonable return), the

² *Parliamentary papers II*, 2014-15, 34089, 3, p. 1.

necessary investments in quality, and therefore the security of supply of drinking water, will be safeguarded.

3 Connection with other decisions

17. Every year, ACM issues separate decisions setting the maximum production price that producers of electricity and drinking water are permitted to charge distributors of electricity and drinking water. ACM also sets the maximum distribution tariff that a distributor is permitted to charge an end-user (consumers and businesses). Maximum prices and maximum tariffs mean that the prices and tariffs charged by a producer or distributor must not exceed the prices and tariffs set by ACM.
18. In this chapter, ACM describes how the production prices for the 2020 calendar year relate to the method decision that establishes the regulation system.

3.1 From method decision to production price and distribution tariff decision

19. ACM's power to adopt a production price decision and a distribution tariff decision results from Article 2.5, paragraph 1, and Article 3.14, paragraph 1, of the BES Electricity and Drinking Water Act.
20. In order to set a production price and distribution tariffs, ACM must apply a method that describes how the costs of a business lead to a tariff for the end-user. The legal basis of this method results from Article 2.5, paragraph 4, and Article 3.14, paragraph 5, of the BES Electricity and Drinking Water Act:

“Article 2.5

- 1. On January 1st of each year, on a proposal from a producer, the Netherlands Authority for Consumers and Markets sets the maximum production price that this producer will charge a distributor for the electricity or drinking water that it produces.*
- 2. The production price for electricity or drinking water is based on the actual production costs, allowing for a reasonable return, and includes operating and maintenance expenses, energy costs and capital expenses.*
- 3. Notwithstanding the first paragraph, the energy costs may be set as a monthly variable part of the production price.*
- 4. In setting the production price, the Netherlands Authority for Consumers and Markets applies a method that promotes efficient business practice.*
- 5. (...)*
- 6. (...)*
- 7. By ministerial decree, more specific rules are set with regard to the procedure and elements and the method used to calculate the production price referred to in this article.*

Article 3.14

- 1. On a proposal from a distributor, the Netherlands Authority for Consumers and Markets sets the maximum tariffs that the distributor will charge end-users for the distribution of electricity or drinking water.*
- 2. There are four distinct tariffs:*
 - a. connection tariff;*
 - b. fixed use tariff;*
 - c. variable use tariff;*
 - d. road transportation tariff for drinking water.*
- 3. The tariffs may differ for different categories of end-user.*

4. *The tariffs are non-discriminatory, transparent and based on the actual costs, allowing for a reasonable return and taking into account the subsidy referred to in Article 5.1.*
5. *In setting the tariffs, the Netherlands Authority for Consumers and Markets applies a method that promotes efficient business practice.*
6. *The tariffs come into force on a date to be specified by the Netherlands Authority for Consumers and Markets and apply until January 1st of the year following the date of entry into force of the decision setting the tariffs, with the exception of the variable use tariff, which may be set on January 1st and July 1st of each calendar year.*
7. *If on January 1st the tariffs for that year have not yet been set, the most recently set tariffs will remain in force up to the date of entry into force of the decision setting the tariffs for the following year.*
8. *By ministerial decree, more specific rules are set with regard to the procedure and elements and the method used to calculate the tariffs, as referred to in this article.”*

21. The decree referred to in the above articles is the Ministerial Decree on Electricity and Drinking Water in the BES Islands.³ Article 2.1 of the decree specifies more detailed requirements with regard to the method decision referred to above:

“Article 2.1

1. *After consultation with stakeholders, the Netherlands Authority for Consumers and Markets adopts a method referred to in Article 2.5, paragraph 4, and Article 3.14, paragraph 5, of the Act for a period of three to ten years.*
2. *The method describes how the production price and the tariffs are set, in such a way that the method encourages efficient business practices by the producer and the distributor, provides a reasonable economic return and a reliable, affordable, and sustainable supply of energy and drinking water.*
3. *The method specifies at least how the expected efficient costs are determined and, to that end, the method used to determine what constitutes a reasonable economic return.*
4. *The method lays down the way in which the energy costs are determined as part of the production price.*
5. *Three months before any intended date of entry into force of an amendment to the production price or the tariffs, a producer or distributor must submit a proposal to that effect to the Netherlands Authority for Consumers and Markets.”*

22. After consultation with stakeholders, comprising the various producers, distributors and end-user organizations in the Caribbean Netherlands, ACM adopted the “Method for setting the tariffs for the production and distribution of electricity and drinking water in the Caribbean Netherlands 2020-2025” (hereinafter: the method) on September 25th, 2019. On September 25th, 2019, also after consultation with stakeholders, ACM adopted the method for the so-called Weighted Average Cost of Capital (hereinafter: the WACC method), the permitted reasonable return for the companies concerned. The WACC method is an annex to the aforementioned method, of which it forms an integral part. ACM has published both methods on its website.
23. The aforementioned method applies for a period of six calendar years, from January 1st, 2020 to December 31st, 2025.

³ Decree of the Ministry of Economic Affairs of June 10th, 2016, no. WJZ/15003661, containing rules on the production and distribution of electricity and drinking water on Bonaire, Sint Eustatius and Saba. *Government Gazette* 2016, no. 33268.

24. The BES Electricity and Drinking Water Act and the Ministerial Decree form the basis of the method. The method then forms the basis of the production price decision and the distribution tariff decision.

3.2 The production price proposal

25. On the basis of Article 2.1, paragraph 5, of the Ministerial Decree on Electricity and Drinking Water in the BES Islands, a producer must submit an appropriate proposal to ACM three months before the intended start date of the production price amendment.
26. The production price proposal by STUCO referred to in the Ministerial Decree came into existence in the period from July to November 2019.

4 Legal protection

27. In this chapter, ACM describes the legal means available to stakeholders to challenge the production price decision or the distribution tariff decision. To that end, ACM describes the applicable laws and procedural law.
28. Article 3, paragraph 1, preamble and part a, of the Bonaire, Sint Eustatius and Saba Public Entities Implementation Act states that the General Administrative Law Act, with the exception of Chapter 9, does not apply to the decisions and actions of administrative bodies established in the European part of the Netherlands for the implementation of legislation that applies only within the public entities.
29. Pursuant to Article 3, paragraph 2, of the Bonaire, Sint Eustatius and Saba Public Entities Implementation Act, in the cases referred to in paragraph 1, the BES Administrative Justice Act (*Wet administratieve rechtspraak BES*) applies insofar as decisions within the meaning of that Act are concerned.
30. Under Article 3, paragraph 1, of the BES Administrative Justice Act, a decision is defined as a written decision by an administrative body that is a legal act under public law and that is not of general scope.
31. Pursuant to Article 7, paragraph 1, of the BES Administrative Justice Act, natural persons and legal persons whose interests have been directly affected by a decision can appeal against it to the Court of First Instance of Bonaire, Sint Eustatius and Saba (hereinafter: the Court).
32. On the basis of Article 9, paragraph 1, of the BES Administrative Justice Act, a judicial appeal can be lodged against a decision on the grounds that the decision conflicts with a generally binding provision or a general legal principle.
33. Under Article 55 of the BES Administrative Justice Act, natural persons and legal persons as referred to in Article 7, paragraph 1, of the BES Administrative Justice Act are authorized to lodge an administrative appeal with ACM to protest the decision, and to appeal to the Court only after ACM has made a decision pertaining to the administrative appeal.

4.1 What does this mean?

34. ACM is established in the European part of the Netherlands and its responsibility is to ensure compliance with the BES Electricity and Drinking Water Act. This Act only applies to the public entities of Bonaire, Sint Eustatius and Saba. For this reason, the BES Administrative Justice Act (rather than the General Administrative Law Act) applies to ACM's decisions pertaining to the implementation of the Act.
35. Natural persons and legal persons (people and companies) whose interests have been directly affected by this decision (stakeholders) can directly file a judicial appeal against this decision or may first file an administrative appeal with ACM.
36. In order to be a stakeholder, the party must have its own sufficiently objective, personal or individual (i.e. distinguishable from the interests of others), direct and current interest. ACM will assess whether this is the case if natural persons or legal persons challenge this decision.

4.2 Direct judicial appeal...

37. Stakeholders can file a judicial appeal directly. A substantiated appeal must be submitted to the Registry of the Court no later than six weeks after this decision was sent or issued.
38. Stakeholders established on Saba or Sint Eustatius must submit their appeal in duplicate to the Registry of the Court on Sint Maarten. The address of the Registry is: Frontstreet 58 (The Courthouse), Philipsburg, Sint Maarten.
39. Stakeholders established on Bonaire must submit their appeal in duplicate to the Registry of the Court on Bonaire. The address of the Registry is: Plasa Reina Wilhelmina (Fort Oranje), Kralendijk, Bonaire.

4.3 ... or first an administrative appeal filed with ACM

40. Stakeholders may also choose to submit an administrative appeal to ACM first.
41. A substantiated administrative appeal can be submitted to ACM no later than six weeks after this decision was sent or issued. Stakeholders can submit their administrative appeal to ACM by e-mail. The appeal must be sent to: procedurescn@acm.nl. ACM will send confirmation of receipt. If the submitter of the appeal receives no confirmation of receipt from ACM, ACM urges the submitter to contact ACM by telephone on: +31 (0)70 722 23 13.
42. The judicial or administrative appeal may also include arguments against the method of September 25th, 2019 adopted by ACM and the WACC method of September 25th, 2019 forming part of it.

5 Setting the production price

43. As stated in Section 5.2 of the regulation method of September 25th, 2019, ACM takes a number of steps in setting the production price:
- Step 1: Determining the fixed and variable costs for each activity;
 - Step 2: Determining how the costs lead to revenues;
 - Step 3: Determining how the revenues lead to tariffs;
 - Step 4: Determining how any differences between costs and revenues are offset retrospectively.
44. ACM describes the above four steps in this chapter. In Annex 1 to this decision, ACM provides an overview of the amounts calculated in this chapter. The calculation models (Annexes 2 and 3) show the calculations made by ACM in order to calculate the maximum production price.
45. The profit-sharing methodology referred to in the method decision will be applied by ACM for the 2020 production prices. In this methodology, ACM looks back at 2018 to determine the difference between the 2018 estimated costs and the actual costs for that year, after any corrections. The implementation of this methodology is dealt with in the following sections and has been developed into a separate calculation model (see Annex 3).

5.1 Determining the fixed and variable costs of each activity

46. A producer's costs consist of capital costs and operating costs – together also referred to as the regulatory costs. Capital costs comprise depreciation and a reasonable return (WACC) on the invested capital. Operating costs are costs incurred by a company to keep the business operating, such as personnel costs. ACM bases its cost determination for the setting of the production price in 2020 on the 2018 costs, as recorded in the financial statements, supplemented with additional information on the operating costs and assets that the producer has sent to ACM.
47. In order to apply profit-sharing, ACM uses the estimated cost base drawn up for the setting of the 2018 production prices. ACM can adjust this cost base retrospectively if it appears to be based on incorrect or incomplete data.
48. The application of profit-sharing then requires the actual costs for 2018. For this purpose, ACM uses the 2018 costs reported in the 2018 financial statements, in principle without corrections. ACM can therefore compare the 2018 estimate with the actual figures for 2018. Any corrections resulting from previous recalculations could constitute grounds to adjust the actual 2018 cost figures, in order to prevent any duplicated remuneration or duplicated repayment.
49. In summary, ACM sets different cost bases for the different objectives of the tariff regulation. There are three cost bases:
1. a cost base for the estimate of the 2020 costs;
 2. a cost base for the estimate of the 2018 costs;
 3. a cost base for the actual 2018 figures.
50. Components of these three cost bases may differ. For each component, ACM will state below whether that is the case and, if so, in what way.
51. Finally, it is important that ACM subdivides costs into a fixed and a variable component, from the start of the 2020-2025 regulatory period. The starting point here is that variable costs are assumed

(on a pro-rata basis) to increase or decrease as the volume develops, while fixed costs are not affected by how the volume develops. In marginal numbers 82 to 86 of the method decision, ACM has described how and why it makes a division between fixed and variable costs. This is expanded upon in this tariff decision by means of a description of the division that has been made, and why (Section 5.1.3), and how this division is applied when carrying out the volume correction for 2018, and the setting of the allowed revenues for 2020 (Section 5.2).

5.1.1 The capital costs

52. In order to estimate the capital costs for 2020, ACM must first determine the regulatory value of the assets. We call this the regulatory asset value (hereinafter: RAV).
53. The RAV consists of the fixed assets that the producer uses to produce drinking water and that it requires for its business operation. The RAV is therefore made up of the value of the assets that can be allocated directly or indirectly to the production of drinking water.
54. The depreciation of the RAV and a reasonable return on the RAV make up the capital costs. ACM in principle uses the RAV determined for the 2019 production price, plus the investments that the producer capitalized in 2018. This results in an RAV on December 31st, 2018 (2018 year-end). For specific large assets, ACM may also decide to base the estimated costs for the year 2020 on the expected average costs in 2020 of these specific assets. ACM does this where there are a few very large assets that do not meet the assumption of continuous replacement. For STUCO this is the case with the expected investment in 2020 in a new drinking water facility, as described in Section 5.1.4.
55. ACM determines the annual depreciation by applying the depreciation periods used by the producer. ACM chooses not to take account of any residual value (the estimated amount that the producer receives for the sale of the assets at the end of the expected lifetime). That is because a producer must be able to recoup past efficient investments through the tariffs. ACM does, however, take account of actual proceeds of asset sales.
56. If an asset has been financed (in whole or in part) with a subsidy or contributions from third parties, the historical cost is reduced by the amount of that subsidy and/or contribution.
57. ACM does not include assets under construction in determining the RAV. Assets only form part of the RAV if they have been taken into use (capitalized). A producer is permitted to capitalize the construction interest on assets under construction.
58. For the production of drinking water, ACM has determined the RAV for the end of 2018 and the depreciation for 2018 in accordance with the amounts stated in Annex 1 to this decision.
59. ACM calculates the reasonable return that a producer may achieve in 2020 by multiplying the RAV by the WACC that ACM has set for 2020.⁴ ACM adds the depreciation to this to determine the capital costs.
60. ACM calculates them using a nominal WACC, which already includes inflation. Full allowance is therefore already made for inflation on the RAV by means of the WACC.⁵

⁴ Calculating the WACC for energy and water companies in the Caribbean Netherlands, ACM/UIT/519576, marginal 7

⁵ Calculating the WACC for energy and water companies in the Caribbean Netherlands, ACM/UIT/519576, marginal 7

5.1.2 The operating costs

61. The regulatory costs consist of both capital costs and operating costs. ACM estimates the 2020 operating costs on the basis of the operating costs in the adopted 2018 financial statements. On the basis of the allocation keys supplied by the producer, ACM allocates the operating costs to the various activities: production and distribution of drinking water and electricity. ACM describes below which operating costs have been allocated (fully or partly) to the production of drinking water and the choices ACM has made with regard to a number of specific items. ACM also discusses the cost base for profit-sharing.
62. ACM does not consider all the operating costs recognized in the 2018 financial statements to be representative for the estimate of the 2020 costs. ACM therefore does not include a number of cost items in the cost base for 2020, or has estimated a different value for these cost items for 2020 than the amount entered in the financial statements in 2018. In this section, ACM describes the items to which this applies and the basis on which it has adjusted these items. ACM also states in this section how it deals with other revenues.

Costs and other items that do not form part of the operating cost base

63. ACM first excludes a number of costs and other items because they are already reimbursed in another way. Profit and loss, dividend, interest expenses for loan capital and the transaction costs for financing are part of the capital costs and are reimbursed through the WACC. ACM therefore does not include these cost items in the operating costs. Depreciation is already included through the reimbursement of capital costs and is similarly not part of the operating costs. Finally, ACM also excludes the costs for purchases of fuel and electricity (for the production of drinking water) from the operating costs, because these costs are reimbursed separately (see Section 5.1.4).

Provisions

64. In the case of changes in provisions, ACM determines for each type of provision how it will include these in determining the cost base. That is because changes in provisions cannot be treated immediately as costs: it is also possible that a provision is recognized but proves to be unnecessary. A release of a provision is therefore not necessarily income that ACM will include in determining the cost base. On the other hand, an addition to a provision is also not necessarily a cost item in a regulatory sense.

Corrections to costs and revenues

65. From 2020, ACM will no longer apply corrections to incidental costs and revenues. In marginal 72 ff. of the method decision for the 2020-2025 regulatory period, ACM explains why it has introduced this change. However, ACM will continue to evaluate the stated costs and other revenues and it may correct them before the cost base is used for carrying out profit-sharing or setting the cost base for calculating the tariffs.

Other costs and revenues

66. ACM also takes account of activities carried out by the producer for which ACM sets no tariff. The costs and revenues of such activities must be kept wholly outside the tariff regulation, because otherwise they might be reimbursed twice.
67. Whenever other revenues result from activities that are regulated and the costs of which are included in the cost base, ACM deducts these revenues from the cost base. This method creates an operational cost 'net amount', which gives a clear picture of the amount that has to be earned through the regulated tariffs in order to cover the costs of the activity in question.

Inflation

68. In order to estimate the operating costs for 2020, the costs in the previous years' price levels must be adjusted for inflation. ACM uses data from the Netherlands Central Bureau for Statistics for these figures. For the inflation correction in year t , ACM uses the percentage difference in the consumer price index for St. Eustatius between the third quarter of year $t-1$ and the third quarter of year $t-2$. The values for the consumer price index are included in the calculation model in Annex 2.

5.1.3 Splitting fixed and variable costs

69. As mentioned in the introduction to this chapter and in marginals 82 to 86 of this method decision, ACM divides the total costs into a fixed and a variable component. This enables ACM to take better account of any expected rises in costs that are related to the increase in the produced volume.
70. Capital costs and operational costs may be split into a fixed and a variable component. With regard to the capital costs, ACM points out that it recognizes that in practice they are not literally variable; the costs of investments in certain assets do not decrease if, as a result of lower future volumes, the assets in question are used to a lesser degree. ACM will take this into account in the event of any substantial decrease in volumes. This is not currently the case. In cases where volumes increase, ACM is of the opinion that applying 'variable capital costs' could be a useful way of estimating, as is the case with operational costs, the amount by which the costs increase when the volume increases.

Determining the proportions of variable costs

71. ACM has asked every company for their estimates regarding the division of their capital costs and operational costs into fixed and variable costs. STUCO did not make use of this.
72. For the costs related to the production of drinking water, ACM generally determines the following. For this, the data available to ACM on the production companies in Caribbean Netherlands and the proposals from the companies it has received are used.
73. ACM has not been able to establish the existence of any noteworthy level of assets among any of the companies, the nature of which are associated with the production volume. None of the proposals received by ACM from the companies contained concrete claims or arguments regarding the existence of variable capital costs in the production of drinking water or electricity. ACM has therefore concluded that there are no, or hardly any, capital costs that are directly related to the volumes produced. ACM is therefore setting the proportion of variable capital costs for the production of drinking water for STUCO at 0% (zero).
74. In the case of the operational costs, there are two types of variable operational costs:
- Costs that, by their nature, show a direct relationship (one-on-one) with the volume produced. Examples include lubricating oil used for generators, or chemicals used for improving the quality of drinking water. ACM refers to these costs as 'fully variable costs'.
 - Costs of personnel or materials, some of which show a relationship with the volume produced. This includes, for example, the deployment of additional personnel or overtime in the event of extra volume being produced, or the quantity of tools or materials needed for maintaining generators. ACM refers to these costs as 'partly variable costs'.
75. ACM regards the 'fully variable costs' as 100% variable. For the 'partly variable costs', ACM makes assumptions about the variable nature of the costs. On the basis of its own analysis and the proposals it receives, ACM assumes that 25% of the costs for personnel, materials,

equipment, and any work by third parties that are *directly* attributable to production⁶ are variable. ACM assumes that the remaining direct operational costs and the costs that are *indirectly* attributable to production are fixed (0% variable). This results in the following three-way division of the operational costs:

- Directly attributable operational costs, which by their nature are fully variable, are: 100% variable;
- Directly attributable operational costs for personnel, materials, equipment, and work by third parties: 25% variable;
- Other directly and indirectly attributable operational costs: 0% variable.

76. The final percentage of the total operational costs that ACM regards as variable is achieved by dividing all the costs designated as variable by the total operational costs.
77. Based on the provisional annual account of STUCO, ACM made a general analysis of the variable operational cost of STUCO. Given the late delivery of the final 2018 annual account it was not possible anymore to do a final analysis based on the final annual account and to check the calculation with STUCO. ACM has therefore decided, based on the general analysis, to submit the percentage to STUCO as part of the concept models sent to STUCO. ACM requested STUCO to approve of the percentage or to disapprove. STUCO did not respond to this request. ACM has determined that the percentage is an accurate reflection of the degree to which the operational costs for the production of drinking water are expected to be related to the produced volume. Regarding the 2021 tariff setting ACM will refine the calculation.
78. On the basis of the analysis and assumptions presented above, ACM has arrived at the following variable cost percentages:
- ACM regards 0% of the total capital costs for the production of drinking water as variable.
 - ACM regards 13% of the total operational costs for the production of drinking water as variable.

Applying the proportions of variable costs

79. ACM has introduced three different cost bases in marginal 49 of this decision. When determining two of these costs bases, ACM applies the splitting of fixed and variable costs. ACM explains this as follows.
80. First, ACM uses the split when determining the cost base for estimating the costs in 2020. The estimate of the costs in 2020 is based mainly on the actual costs in 2018. If an increase in volume is expected between 2018 and 2020, a corresponding increase in the related costs is inevitable.⁷ The degree to which the costs are expected to increase in 2020 compared to 2018 can be determined on the basis of the proportion of the variable costs of the total costs. After all, fixed costs are supposed to remain the same, while variable costs can be expected to rise in parallel with a rise in volume. To illustrate, a fictitious example: if 40% of the total costs are designated as variable, and an increase in volume of 5% is expected between 2018 and 2020, then an increase of 2% of the total costs related to the greater volume can be expected.
81. By taking any increase in volumes into account when estimating the costs in 2020, it is possible to estimate more accurately what level of tariff covers costs in 2020. Although the final effect of volume increases is calculated retrospectively in the volume correction, an accurate estimate can help keep this volume correction as small as possible.

⁶ In the decisions for the fixed use tariffs, ACM uses the same analysis for determining the variable operational costs for distribution. For distribution, ACM arrives at 50% variable costs. The reason for this is that the costs associated with distribution are more closely related to the volume supplied (in the form of connections) than is the case with production.

⁷ Apart from an increase in costs due to an increase in volume, account is also taken of inflation.

82. Second, ACM uses the splitting of fixed and variable costs for adjusting the estimated costs for 2018. Before the estimated and actual costs are compared to each other in the profit sharing, ACM applies a volume correction to the estimated costs for 2018. The purpose of this volume correction is to be able to take account of the cost difference that arises as a result of the actual volumes for 2018 differing from the volumes used when estimating the cost base for 2018. Here, too, ACM adjusts the cost estimate by allowing the variable component of the estimated costs to move in line with the movement of the volume.
83. ACM introduced the splitting of fixed and variable costs in its 2020-2025 method decision. ACM also applies this split to the volume correction and profit sharing for the years 2017 and 2018. ACM is of the opinion that this refinement will lead to improved remuneration of efficient costs, and will take greater account of the effects of the development of production volumes in Caribbean Netherlands.

5.1.4 Developments in 2020

84. In specifying the revenues used to determine the tariffs, ACM can take account of developments in the costs or activities relative to the cost base. ACM will take account of changes (increase or decrease in revenues relative to costs) in the event of *major occurrences*, as described in marginals 91 to 95 of the method decision.
85. A provision to that effect also existed in the first regulatory period (2017-2019), but under the current method decision, ACM will apply the provision in a different way, as in the first period ACM also took account of changes in the costs associated with price rises and volume growth. ACM has sometimes also included 'generic rises' in investments in the estimates, even though they were not demonstrably associated with a major occurrence. Compared to the first period, ACM will be more restrained in including additional costs.
86. During the creation of the production price decision, STUCO notified ACM about the plans for a new investment in 2020 in the production of drinking water. As the expected investment has a significant impact on the total cost of STUCO and as STUCO made sufficiently clear that the investment will happen, ACM correct the income of STUCO to account for the additional cost related to this investment. To determine the cost base for 2020 ACM takes into account the depreciation and capital cost from the expected moment the investment will be put into use. This way ACM expects to make a better estimation of the actual cost of STUCO in 2020. However, based on marginal 117 of the method decision, ACM has the option to make this correction a year later in case the invested amount in 2020 is significantly lower than anticipated or if the investment does not take place at all. This way ACM ensures that via the production price not more than the reasonable cost for the production of drinking water will be reimbursed.

5.1.5 The calculation of the energy costs

87. As ACM has stated in the method decision, the production price of drinking water includes an energy cost component. These are the costs of the electricity required to produce drinking water. This component consists of two parts: the fixed costs that STUCO incurs for the electricity connections for water production and the variable costs that STUCO incurs for the drinking water production process. ACM determines the energy cost component for the whole of 2020.
88. The data that ACM takes into account in calculating these costs are as follows:

- The expected technical yield (how many kWh STUCO requires to produce one cubic meter of drinking water)
- The capacit(y)(ies) of the electricity connection(s) for drinking water production;
- The set electricity tariffs (fixed used tariff and variable use tariff) for 2020.

5.2 Determining the allowed revenues

89. The previous section describes how ACM determines the costs. In this section, ACM describes how it determines the allowed revenues. The allowed revenues for 2020 are based on the established costs, with three adjustments:
- The expected variable costs will be adjusted for the expected 2020 volume. Account will be taken of the effects of any major occurrences.
 - The price level of the costs will be adjusted for 2020 by applying a correction for the expected rate of inflation.
 - When determining the revenues for 2020, ACM incorporates the results of several corrections related to previous years.
90. When determining allowed revenues, ACM takes the expected volume development for 2020 into account. The variable costs measured in 2018 can be expressed in a cost level *per unit of volume* by dividing the 2018 variable costs by the volume measured in 2018. Subsequently multiplying this cost level per unit of volume by the expected volume for 2020 results in the expected cost level of variable costs for 2020. By then adding up the 2018 fixed costs, the expected cost level for 2020 is arrived at.
91. When determining the production price for 2020, ACM incorporates the results of the following corrections:
1. Volume correction for 2017
 2. Volume correction for 2018
 3. Profit sharing for 2017
 4. Profit sharing for 2018
 5. Fuel correction for the producer for 2018
 6. Fuel correction for the producer for 2019
92. When determining the production price for the year 2019 ACM corrected for volume and profit sharing regarding the cost for production of drinking water in the year 2017. This correction was based on the cost reported in the provisional 2017 annual account of STUCO because the final annual account was not available at that time. Now that ACM has the final annual account, ACM corrects for the difference between the correction of volume and profit sharing over 2017 as done in the decisions for 2019 and the correction as it should have been based on the final annual account. ACM includes the correction of the volume and profit sharing correction over 2017 in the calculation of the production price for the year 2020.
93. In the following sections ACM describes the way this correction has been implemented.

5.2.1 Volume correction

94. ACM based the calculation of the 2017 and 2018 production price on a certain expected production volume. ACM will correct this volume if it turns out to be higher or lower. After all, the 2018 production price is based on this volume: the fixed costs that ACM had estimated for 2017 and 2018, divided by the estimated volume, form the fixed costs component of the production

price. If the actual volume is higher than estimated, the producer has received excessive coverage for fixed costs through the production price. And if the actual volume turns out lower than estimated, the producer has received insufficient coverage for the fixed costs. The variable costs automatically change in line with the difference between estimated and actual volume, and no correction for this is needed. In the volume correction, ACM takes into account the splitting of the costs into a fixed and a variable component, as described in Section 5.1.3 of this decision (specific marginal 82).

95. ACM calculates this amount by multiplying the fixed part of the production price by the difference between the estimated and the actual volume. In the event of a higher actual volume, the correction amount is negative. This means that the producer has received too much and repays this amount (in the form of a discount) through the 2020 production price to the end-users. Finally, specifically for the volume correction over 2017, ACM calculates the difference between the volume correction based on the final 2017 annual account and the volume correction as included earlier in the calculation of the production price for 2019.
96. The calculation and the result of the calculation are included in Annex 1 and Annex 3 to this decision.

5.2.2 Profit sharing

97. Section 5.1 describes how ACM determines the estimated 2017 and 2018 cost base and the actual 2017 and 2018 cost base. As laid down in the method, ACM applies the 'profit-sharing' methodology to encourage companies to operate efficiently. By looking back at the estimated costs in 2017 and 2018 (after the correction for the actual volume) and the actual costs in 2017 and 2018, it is possible to see whether the producer has incurred more or lower costs than previously estimated. Any difference is apportioned equally (50%) between the producer and the end-user. Finally, specifically for the profit sharing over 2017, ACM calculates the difference between the profit sharing based on the final 2017 annual account and the profit sharing as included earlier in the calculation of the production price for 2019.
98. The numerical implementation of this methodology is included in Annex 1 and Annex 3 to this decision.

5.2.3 Fuel correction

99. The method states that companies must not be beneficially or detrimentally affected by rising or falling energy costs. Electricity is required to produce drinking water. ACM has calculated the amount by which the electricity costs have proved to be greater or lower for the producer as a result of the variable use tariff for electricity being higher or lower than estimated by ACM. ACM is correcting the 2020 production revenues by this difference for the years 2018 and 2019.
100. This calculation and the result of this calculation are included in Annex 1 and Annex 3 to this decision.

5.3 Setting the maximum production price

101. The previous section states the permitted 2020 revenues for the production of drinking water. In this section, ACM sets the maximum production price per cubic meter of drinking water that STUCO is permitted to charge as the internal transfer price in 2020.
102. The estimated production volume for 2020 is required in order to set the production price. ACM accepts the estimate by STUCO. As described in marginal 81 ACM also uses this estimated volume for determining the allowed revenues for 2020, so it is therefore important that the production price is arrived at by dividing the allowed revenues for 2020 by this same level of expected production volume.
103. This calculation and the result of this calculation are included in Annex 1 and Annex 3 to this decision.

5.4 Retrospective determination of differences

104. In Article 5.2 of the method decision, ACM explains how it deals with differences between the determined allowed revenues and the actual costs incurred.
105. In the operation of the chosen profit-sharing methodology, the allowed revenues for a particular year are determined in advance and the difference between those revenues and the costs incurred by the producer in that year is then determined retrospectively. ACM sets part of that difference, namely 50%, against the revenues for the next calendar year. The remainder is for the account of the company, and is a profit or loss (depending on the aforementioned difference).
106. This retrospective examination will be carried out for 2020 with reference to the 2022 tariff proposal, when the actual costs of STUCO for 2020 are revealed by the independent audit of the 2020 financial statements.
107. ACM has stated in the method that this retrospective examination includes a correction for differences in volume and for changes resulting from energy costs. Specifically for the production of drinking water by STUCO, this concerns the estimate for the production volumes, as stated in Annex 2.
108. If these volumes turn out higher or lower, ACM will apply a correction before examining whether STUCO incurred higher or lower costs than previously estimated. These differences are due to be determined in 2021 and ACM will incorporate any (possible) differences in the production price decision for 2022.

6 Provisions

109. On the basis of Article 2.5, paragraph 1, of the BES Electricity and Drinking Water Act, ACM sets the maximum production price of drinking water that St. Eustatius Utility Company N.V. will charge as the internal transfer price for drinking water with effect from January 1st, 2020.
110. ACM sets this production price at 5,297 USD per cubic meter of drinking water.
111. This decision and its annexes will be announced in the Government Gazette. ACM will also publish this decision on its website (www.acm.nl).
112. This decision comes into force on January 1st, 2020.

The Hague,
Date: December 19, 2019

Netherlands Authority for Consumers and Markets,
on its behalf,

original signed

F.E. Koel
Team Manager Energy Department

Filing a judicial or administrative appeal against this decision?

Judicial appeal

Natural persons and legal persons whose interests have been directly affected by this decision may file a judicial appeal no later than six weeks after this decision was sent or issued. Stakeholders established on Saba or Sint Eustatius must submit their appeal in duplicate to the Registry of the Court on Sint Maarten. The address of the Registry is: Frontstreet 58 (The Courthouse), Philipsburg, Sint Maarten. Stakeholders established on Bonaire must submit their appeal in duplicate to the Registry of the Court on Bonaire. The address of the Registry is: Plasa Reina Wilhelmina (Fort Oranje), Kralendijk, Bonaire.

An administrative appeal can also be filed with ACM first

Natural persons and legal persons whose interests have been directly affected by these decisions may also first file an administrative appeal against this decision. A substantiated administrative appeal can be submitted to ACM no later than six weeks after this decision was sent or issued. Stakeholders can submit their administrative appeal to ACM by e-mail. The appeal must be sent to: procedurescn@acm.nl. ACM will send confirmation of receipt. If the submitter of the appeal receives no confirmation of receipt from ACM, ACM urges the submitter to contact ACM by telephone on: +31 (0)70 722 23 13

Annex 1: Overview of amounts

In this annex, ACM presents an overview of the amounts referred to in Section 5 of this decision. ACM has included the detailed calculation in the calculation models (Annex 2 and Annex 3).

Key figures Tariff decisions STUCO 2020 - Drinking Water		Unit			
Parameters					
WACC 2020	%		6,08%		
Estimated inflation 2019	%		1,10%		
Estimated inflation 2020	%		0,70%		
Expected percentage of drinking water delivered by truck in 2020	%		1,00%		
Allowance for bad debts (% of total income)	%		1,00%		
Percentage for profit sharing	%		50,00%		
Summary of cost data 2018					
			Water production	Water distribution	Water truck delivery
Operational costs 2018 (excl fuel)	USD, pl 2018		425.184	688.540	6.955
Other income 2018	USD, pl 2018		-	34.054	344
Regulated Asset Value (ultimo 2018)	USD		378.662	641.526	6.480
Depreciation over 2018	USD		44.743	51.629	522
Data on developments					
Additional RAB related to new investment water production	USD, pl 2020		576.612		
Additional depreciation related to new investment water production	USD, pl 2020		46.776		
Addition in RAB in 2020 due to growth of the water network	USD, pl 2020			154.817	
Addition in depreciation in 2020 due to growth of the water network	USD, pl 2020			12.619	
Data on corrections					
Volume-effect 2017	USD, pl 2020		10.134	-	10.740
Volume-effect 2018	USD, pl 2020		-130.580	-	-1.513
Profit sharing: regular costs 2017	USD, pl 2020		-6.751	78.136	-7.334
Profit sharing: regular costs 2018	USD, pl 2020		52.997	85.766	-482
Profit sharing: network losses 2017	USD, pl 2020			24.760	
Profit sharing: network losses 2018	USD, pl 2020			-1.658	
Energy costs correction 2018	USD, pl 2020		6.123		
Energy costs correction 2019	USD, pl 2020		1.933		
Allowance for bad debts	USD, pl 2020			7.559	139
Income level 2020					
Total costs 2020 based on estimated volume 2020	USD, pl 2020		601.167	773.790	6.770
of which are the estimated variable costs per unit	USD, pl 2020 / #		0,59	347,63	1,65
plus extra variable capital costs per new water connection	USD, pl 2020 / #			233,76	
Income level 2020 after corrections	USD, pl 2020		535.023	945.252	8.320
Additional: total electricity costs for production of drinking water	USD, pl 2020		136.202		
Other parameters (expectations 2020 drinking water)					
Total estimated production volume	m3		126.718		
of which distributed by truck	m3				1.047
Required electricity for drinking water	kWh/m3		3,407		
kVA-connection for water production	kVA		85,5		
Network loss (estimated for 2020)	%			17,39%	
Expected number of connections 2020 (standard category)	#			819	

Note: 'pl' means price level

Annex 2: Calculation of production price for 2020

ACM publishes on its website (www.acm.nl) the 'Berekening tarieven STUCO 2020' Excel file, containing the calculation model including the calculation of the maximum production price for STUCO. This file is being published as an annex to this decision, of which it forms an integral part, and will be posted on the publication page of this decision at www.acm.nl.

Annex 3: Calculation of profit sharing correction

ACM publishes on its website (www.acm.nl) the 'Berekening profit sharing correcties voor tarieven STUCO 2020' Excel file, containing the profit sharing calculation model for STUCO. The file is being published as an annex to this decision, of which it forms an integral part, and will be posted on the publication page of this decision at www.acm.nl.

