Authority for
Consumers & Markets

Public

Decision

Our reference : ACM/UIT/567800
Case number : ACM/21/052519

Decision setting the maximum electricity production price with effect from January 1st, 2022 for:

ContourGlobal Bonaire B.V.

Determination by the Netherlands Authority for Consumers and Markets of the maximum electricity production price as referred to in Section 2.5, paragraph 1, of the BES Electricity and Drinking Water Act.

This document is an English translation of the Dutch version "Beschikking tot vaststelling van de maximale productieprijs van elektriciteit per 1 januari 2022 voor ContourGlobal Bonaire B.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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Contents

1 Introduction and reader's guide

1. By means of this production price decision, the Netherlands Authority for Consumers and Markets (hereinafter: ACM) implements Section 2.5, paragraph 1, of the BES Electricity and Drinking Water Act.[1] Under this section, ACM is required, on the proposal of a producer, to set the maximum production price that this producer will charge a distributor for the electricity it produces.

2. ContourGlobal Bonaire B.V (hereinafter: ContourGlobal) is the producer of electricity on Bonaire.

3. In this decision, ACM sets the maximum production price that ContourGlobal will charge in 2022 to Water- en Energiebedrijf Bonaire N.V. (hereinafter: WEB) for the electricity produced by ContourGlobal and supplied to WEB.

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 ContourGlobal. This chapter also states how ACM will deal with any differences between allowed revenues and costs ultimately incurred. This decision also contains two annexes, namely an overview of the main calculated amounts (Annex 1) and the "CGB production price calculation 2022" Excel file (Annex 2). Annex 2 is published exclusively on the ACM website (www.acm.nl) and forms an integral part of the decision.

5. This decision comes into force on January 1st, 2022.

[1] Act of March 23rd 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 Section 2.5, Section 3.9, paragraph 4, and Section 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 ContourGlobal (more or less) has a monopoly position on Bonaire, ACM is setting, through this decision, the maximum production price per kilowatt hour (kWh) that ContourGlobal may charge in the 2022 calendar year as the production price for electricity.

15. The aim of the regulation system is to prevent ContourGlobal charging an unreasonably high production price for the production of electricity.

16. It is also important that ContourGlobal is able to recoup the efficient costs that it incurs in the production of electricity. If ContourGlobal is reimbursed for its efficient costs (including a reasonable return), the necessary investments in quality, and therefore the security of supply of

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

electricity, 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 2022 calendar year relate to the method decision that establishes the regulation system.

3.1 From method decision to production price and tariff decision

19. ACM's power to adopt a production price decision and a distribution tariff decision results from Section 2.5, paragraph 1, and Section 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 Section 2.5, paragraph 4, and Section 3.14, paragraph 5, of the BES Electricity and Drinking Water Act:

> *"Section 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 section.*
>
> *Section 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 Section 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 section."

21. The decree referred to in the above sections 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 Section 2.5, paragraph 4, and Section 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.

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

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 ContourGlobal referred to in the Ministerial Decree came into existence in the period from July to November 2021.

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. Section 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 Section 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 applies insofar as decisions within the meaning of that Act are concerned.

30. Under Section 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 Section 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 Section 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 Section 55 of the BES Administrative Justice Act, natural persons and legal persons as referred to in Section 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: proceduresc n@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 model (Annex 2) shows 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 2022 production prices. In this methodology, ACM looks back at 2020 to determine the difference between the 2020 estimated costs and the actual costs for that year, after any corrections. The implementation of this methodology is dealt with in the following sections, where the calculation model has been developed (see Annex 2).

5.1 Determining the fixed and variable costs of each activity

46. A producer's costs consist of capital costs and operating costs – sometimes 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 2022 on the 2020 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 2020 production prices. ACM can apply 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 2020. For this purpose, ACM uses the 2020 costs reported in the 2020 financial statements, in principle without corrections. ACM can therefore compare the 2020 estimate with the actual figures for 2020. Any corrections resulting from previous recalculations could constitute grounds to adjust the actual 2020 cost figures, in order to prevent any duplicated remuneration or duplicated repayment.

49. In summary, ACM proposes setting 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 2022 costs;
    2. a cost base for the estimate of the 2020 costs;
    3. a cost base for the actual 2020 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 fixed and variable costs, 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 marginals 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 2020 and setting the allowed revenues for 2022 (section 5.2).

5.1.1 The capital costs

52. In order to estimate the capital costs for 2022, 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 electricity 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 electricity.

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 2020 production price, plus the investments that the producer capitalized in 2020. This results in an RAV for ACM on December 31st, 2020 (2020 year-end). For specific large assets, ACM may also decide to base the estimated costs for the year 2022 on the expected average costs in 2021 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 ContourGlobal, this applies to the existing power plant and the investments in additional production capacity as made in 2019.

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 contributions.

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 electricity, ACM has determined the RAV for the end of 2020 and the depreciation for 2020 in accordance with the amounts stated in Annex 1 to this decision.

59. ACM calculates the reasonable return that a producer may achieve in 2022 by multiplying the RAV by the WACC that ACM has set for 2022.[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 2022 operating costs on the basis of the operating costs in the adopted 2020 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 electricity and the choices ACM has made with regard to a number of specific items. ACM also deals with the cost base for profit-sharing.

62. ACM does not consider all the operating costs recognized in the 2020 financial statements to be representative for the estimate of the 2022 costs. ACM therefore does not include a number of cost items in the cost base for 2022, or has estimated a different value for these cost items for 2022 than the amount entered in the financial statements in 2020. 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.

65. For ContourGlobal, ACM has not exercised any irregular options its treatment of provisions in relation to the statement in 2020 financial statements.

Corrections to costs and revenues

66. 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.

67. For ContourGlobal, ACM has not applied any corrections to the costs and revenues that were reported for 2020.

Other costs and revenues

68. 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.

69. 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

70. In order to estimate the operating costs for 2022, the costs in the previous years' price levels must be adjusted for inflation. ACM uses data from Statistics Netherlands for these figures. For the inflation correction in year *t*, ACM uses the percentage difference in the consumer price index for Bonaire 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.

71. Specifically, for the development of the consumer price index (cpi) between the third quarter of 2019 and the third quarter of 2020 ACM does a correction for the effects of the *emergency measure temporary reduction tariffs energy, telecom and drinking water*.[6] These subsidies had a strong downward effect of multiple percentage points on the original cpi measurement of the CBS. For this reason, the CBS published in November 2021 a corrected measurement for every island of the cpi for 2020, in which the effect of the COVID-19 subsidy is not included.[7] This corrected measurement provides a better overview of the actual price development on the islands. For this reason, when estimating future cost levels, ACM has chosen to base the estimated inflation for the year 2021 on this adjusted cpi measurement.

5.1.3 Splitting fixed and variable costs

72. 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 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.

73. 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

74. When determining the tariff decisions for the year 2020, ACM decided to separate fixed and variable costs for the first time. In preparation of these decisions, ACM asked every company to make an estimate of where this separation should be. ACM has held extensive discussions on this matter with the various companies. On the basis of the proposals received and all the available data, ACM has devised a calculation method for determining the proportion of variable costs. This calculation method has been applied consistently for each company. The result, for

[6] Dit betreft de subsidies die door de ministeries EZK en I&W zijn toegekend aan de nutsbedrijven ter verlaging van de vastrechttarieven naar 0 USD/maand voor alle elektriciteits- en drinkwateraansluitingen.
Engels:
This concerns the subsidies granted by the Ministry of EZK and I&W to the utility companies to reduce the standing charges to USD 0/month for all electricity and drinking water connections.

[7] Zie hiervoor/See: https://www.cbs.nl/nl-nl/maatwerk/2021/45/cpi-caribisch-nederland-exclusief-covid-19-toeslagen.

each company, is a calculation of the proportion of variable costs in relation to operational costs and capital costs of the individual activities of every company. A more detailed explanation of the calculation method can be found in section 5.1.3 of the 2020 tariff decision.[8]

75. In consultation with ContourGlobal, ACM has established that the percentages of variable costs used in relation to tariff decisions for the year 2020 and 2021 can also be used for the tariff decisions for the year 2022.

76. On the basis of this method, ACM has arrived at the following variable cost percentages:
    - ACM regards 0% of the total capital costs for the production of electricity as variable.
    - ACM regards 11% of the total operational costs for the production of electricity as variable.

Applying the proportions of variable costs

77. ACM has introduced three different cost bases in the introduction to section 5.1 of this decision. When determining two of these costs bases, ACM applies the splitting of fixed and variable costs. ACM explains this as follows.

78. First, ACM uses the split when determining the cost base for estimating the costs in 2022. The estimate of the costs in 2022 is based mainly on the actual costs in 2020. If an increase in volume is expected between 2020 and 2022, a corresponding increase in the related costs is inevitable.[9] The degree to which the costs are expected to increase in 2022 compared to 2020 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 2020 and 2022, then an increase of 2% of the total costs related to the greater volume can be expected.

79. By taking any increase in volumes (and therefore the variable costs) into account when estimating the costs in 2022, it is possible to estimate more accurately what level of tariff covers costs in 2022. 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.

80. Second, ACM uses the splitting of fixed and variable costs for adjusting the estimated costs for 2020. 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 2020. 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 2020 differing from the volumes used when estimating the cost base for 2020. 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.

5.1.4 Developments for 2022

81. 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.

82. When submitting the data regarding the estimated costs and production volumes for the year 2022, ContourGlobal informed ACM that it wants to invest in a solar park on Bonaire in 2022.

[8] Decision setting the maximum electricity production price with effect from January 1st, 2020 for ContourGlobal Bonaire B.V., reference ACM/UIT/523604.
[9] Apart from an increase in costs due to an increase in volume, account is also taken of inflation.

This solar park is part of the larger Hybrid Concept project that aims to expand the electricity supply on Bonaire and make it more sustainable, while also lowering the tariffs for end users. ContourGlobal has sent data to ACM regarding the expected investment costs and estimated production of this solar park. At the same time, it became clear that ContourGlobal is still discussing these plans with WEB, the Ministry of Economic Affairs and Climate, and possible co-investors and other stakeholders. ACM has determined that, although it is likely that the solar park in question will be built, there are still many uncertainties about the ultimate size and implementation of the project, the planning and the extent to which ContourGlobal will bear the financing costs for this project. During multiple contact moments throughout October and November 2021, ContourGlobal has confirmed these uncertainties. As a result, ACM has come to the conclusion that there are still too many uncertainties to be able to include this project when determining the tariffs for 2022 as a 'major occurrence' within the meaning of margins 91 to 95 of the method decision. After all, marginal 94 of the method decision stipulates that this is subject to the condition that the effects of an event can be determined with sufficient certainty and that the additional costs can be properly estimated. These conditions are not yet met at the moment.

83. The consequence of this is that the costs associated with this intended investment are not taken into account in the tariffs for 2022. Since the project, if it goes ahead, will have positive effects on the security of supply, sustainability and affordability of the electricity supply on Bonaire, ACM intends to reimburse the capital costs for this project for 2022 in the rates in a following year.

- ACM calculates the capital costs incurred by ContourGlobal in 2022 associated with production assets that will be activated in 2022. Operational costs are not included, unless they can also be activated in accordance with applicable accounting rules.
- Cost of capital is calculated from the activation date to December 31, 2022, applying the WACC for 2022.
- It must concern means of production for the generation or storage of renewable energy (solar park, wind turbines, batteries, etc.).
- ACM does not calculate costs that were already part of the original cost estimate for the year 2022, or that are already reimbursed in another way.
- ACM calculates the relevant costs as soon as possible after the realizations have been announced; ACM aims to include the subsequent calculation in the rates for 2024.

5.1.5 The calculation of the energy costs

84. As ACM has stated in the method decision, the production price of electricity includes an energy cost component. This component comprises the costs of fuel.

85. The data that ACM takes into account in calculating these costs are as follows:
    - The estimated fuel efficiency (the number of liters of fuel required to produce one kWh), possibly using a weighted average of different types of fuel;
    - The share of the production volume that is produced with fuel relative to the total production including production using wind energy;
    - The most recent fuel price, possibly for each type of fuel. This is the price per liter that the producer paid for the fuel used in the most recently concluded purchase agreement for that fuel.

86. The fuel component, expressed in USD per kWh, is then calculated on the basis of the following formula:

Fuel component $_{\text{month t}}$ = estimated fuel efficiency x

estimated share $_{\text{production with fuel}}$ x fuel price $_{\text{most recent}}$

87. In applying the above formula, the producer is permitted to charge the fuel costs monthly in 2022. ContourGlobal is required to keep records of what fuel price and what quantities of fuel ContourGlobal has been using per month. When appropriate, ACM may also request the purchase agreements and paid invoices from ContourGlobal. ContourGlobal is required to submit to ACM a monthly statement of the fuel component that it charges on to WEB and a statement of the most recent purchase invoices for LFO fuel.

5.2 Determining the allowed revenues

88. The previous section describes how ACM determines the costs. In this section, ACM describes how it determines the allowed revenues. The allowed revenues for 2022 are based on the established costs, with three adjustments:
    - The expected variable costs will be adjusted for the expected 2022 volume. Account will be taken of the effects of any major occurrences.
    - The price level of the costs will be adjusted for 2022 by applying a correction for the expected rate of inflation.
    - When determining the revenues for 2022, ACM incorporates the results of several corrections related to previous years.

89. When determining allowed revenues, ACM takes expected volume developments for 2022 into account. The variable costs measured in 2020 can be expressed in a cost level *per unit of volume* by dividing the 2020 variable costs by the volume measured in 2020. Subsequently multiplying this cost level per unit of volume by the expected volume for 2022 results in the expected cost level of variable costs for 2022. By then adding up the 2020 fixed costs, the expected cost level for 2022 is arrived at.

90. When determining the production price for 2022, ACM incorporates the results of the following corrections:
    1. Volume correction for 2020
    2. Profit sharing for 2020
    3. Fuel correction for the producer for 2020

91. In the next sections, ACM describes how the corrections mentioned are carried out. ACM describes the other corrections in section 5.2.4.

92. Finally, ACM has made a change to the way in which companies are (partially) compensated for the costs of inflation and the time value of money when allocating subsequent calculations for a previous year. These costs arise when a subsequent calculation for year t, expressed in the price level of year t, leads to a correction of the tariffs in year t+n, expressed in the price level of year t+n. However, the cpi only offers compensation for the (estimated) inflation. ACM finds that a better compensation for these costs is achieved by using the statutory interest for the Caribbean Netherlands when allocating subsequent calculations.[10] The statutory interest is precisely intended to provide sufficient compensation for the costs of inflation and the time value of money in cases where a company or citizen receives money with a delay. The statutory interest rate for the Caribbean Netherlands is currently 3% and has always been 3% for the relevant past years (on which subsequent calculations are reimbursed). In concrete terms, the compound interest factor for subsequent calculations for year t that are reimbursed in year t+n is: (1+3%)n. See the

[10] Decree of the Ministry of Safety and Justice of November 9th, 2011, no. 5715475/11/6 determination of statutory interest for the public entities on Bonaire, Sint Eustatius and Saba. *Government Gazette* 2016, no. 20639.

calculations in the appendices for the concrete details of the application of the statutory interest on subsequent calculations. For the sake of completeness, the ACM notes that the statutory interest must be applied symmetrically, and therefore grant customers an equally high compensation if they receive money back through subsequent calculations.

5.2.1 Volume correction

93. ACM based the calculation of the 2020 production price on a certain expected production volume. ACM corrects this volume if it turns out to be higher or lower. After all, the 2020 production price is based on this volume: the fixed costs that ACM had estimated for 2020, 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 expectation is that 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 fixed costs and a variable component, as described in section 5.1.3 of this decision.

94. ACM calculates the volume correction 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 2022 production price to the end-users.

95. The calculation and the result of the calculation are included in Annex 2 to this decision.

5.2.2 Profit sharing

96. Section 5.1 describes how ACM determines the estimated 2019 cost base and the actual 2020 cost base. As laid down in the method, ACM applies the profit-sharing methodology to encourage companies to make their operations efficient. By looking back at the estimated costs in 2020 (after the correction for the actual volume) and the actual costs in 2020, 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.

97. In Annex 2 to this decision contains the numerical implementation of this methodology.

5.2.3 Fuel correction

98. The method states that companies must not be beneficially or detrimentally affected by rising or falling fuel prices.

99. The electricity producers have already absorbed part of the fluctuations in the fuel price through the monthly adjustment of production prices. There are three further matters to correct:
    - Time lag of several months between the prices of fuel and their passing on in the production price;
    - The difference between the estimated fuel efficiency and the actual fuel efficiency;

- The actual share of production produced with fuel versus the share produced with sustainable sources.

100. In the 2020 production price decision, ACM has recorded the estimated fuel efficiency. Now that the actual fuel efficiency for 2020 can be determined, ACM is calculating the difference in costs that has resulted. If more than one type of fuel has been used, this is taken into account by ACM by calculating a weighted average fuel efficiency.

101. In the 2020 production price decision, ACM has recorded the share of production that is expected to be generated with fuel. Now that the actual product mix for 2020 can be determined, ACM is calculating the difference in costs that has resulted.

102. Technically, ACM calculates this as follows by going through the following steps each month:
    - ACM calculates the production with sustainable sources (solar or wind), based on technical data.
    - ACM calculates the amount that the producer had to produce with fuel by deducting the amount of production using sustainable sources from the total production.
    - For this amount, ACM calculates the required fuel based on the actual yield.
    - For that required fuel, ACM calculates the associated costs by multiplying the amount by the fuel costs for that month.

103. The totaling of these costs per month for the full year results in the total fuel costs based on use of production resources. ACM then calculates the total revenues of the producer to cover the fuel costs by multiplying the total production per month by the fuel component for that month that has been passed on.

104. The difference between these costs and the revenues is the amount that ACM includes in the recalculation in the 2022 production price. If the costs were lower than the revenues, the producer received more than the revenues required to cover the fuel costs. The producer must then refund this difference to the distributor in 2022 in the form of a discount on the production price. If the costs were higher than the revenues, the producer received less than the revenues required to cover the fuel costs. This difference is then refunded to the producer in 2022 by means of a markup on the production price.

105. The result of this calculation is included in Annex 1 and Annex 2 to this decision.

106. Finally, ACM notes the following. The way in which ACM calculates fuel costs subsequently means that all missed revenues from renewable sources are also reimbursed to the electricity producer. The disappointing wind production at CGB in 2020 as a result of lower wind speeds and long delays during large-scale maintenance will be fully compensated in accordance with this method. In view of the further increase in sustainability on Bonaire, ACM once again emphasizes its aim, as included in paragraph 156 of the method decision, to establish a standard to be able to test the efficiency of production from solar and wind energy.

5.2.4 Other corrections

107. Various one-off corrections apply to the production price in 2022 for ContourGlobal. The exact calculation of all corrections are included in Appendix 2 to this decision. When calculating the production price for ContourGlobal for 2022, ACM applies the following corrections:

a. A recalculation of the income of ContourGlobal in the year 2017 as a result of the changed production price because of the revised ContourGlobal Objection Decision for 2017.[11]
b. A recalculation of the income of ContourGlobal in the year 2018 as a result of the changed production price because with the Decision on Objection for ContourGlobal for 2018.[12]
c. A recalculation of the profit sharing calculation on the changed difference between the estimated and realized costs in 2018. This difference occurs as a direct result of the changed determination of the WACC for 2018 in the Objection Decision for ContourGlobal for 2018.
d. A recalculation of the income of ContourGlobal in the year 2019 as a result of the changed production price in the Decision on Objection for ContourGlobal for 2019.[13]
e. A recalculation of the profit sharing calculation on the changed difference between the estimated and realized costs in 2019. This difference occurs as a direct result of the changed determination of the WACC for 2019 in the Decision on objection for ContourGlobal for 2019.
f. A recalculation of the income of ContourGlobal in the year 2020 and later years, as a result of the granting of compensation for the so-called breakage fee, in marginal 30 of the Decision on Objection for ContourGlobal for 2019.
g. A recalculation of the income of ContourGlobal in the year 2021, as a result of the correction of an error in the volume data used when determining the volume correction for 2019. This correction was promised and explained in an e-mail from ACM to ContourGlobal on dated January 28, 2021.

108. For parts a to f in the previous marginal number, these corrections arise from the amended determination of the WACC for the years 2017-2019, based on a decision of the Joint Court of Justice of Aruba, Curaçao and Sint Maarten and of Bonaire, St. Eustatius and Saba on October 21, 2020.[14]

109. For parts c and e, ACM considers the amended determination of the profit sharing calculation for year t as part of the amended determination of the costs for year t, when making a decision on the objection for year t. The fact that profit sharing is actually expressed as a material effect in the decision for year t + 2 does not alter this.

110. For part f, the relevant breakage fee is in fact attributable to the entire period between the buy off of the loan (in 2019) and the original end date of the loan (in 2024). However, because it is not feasible to allocate the costs in an objective manner to years, and because most of this period has expired at the end of 2022, ACM has opted to reimburse this breakage fee in full in the rates of 2022.

111. ACM will perform a recalculation for the total of the material effects arising from parts a to f if the realized volumes of CGB in 2022 deviates from the estimated volume. CGB's income in 2022 that results from these corrections is influenced by the volume realized in 2022: a higher volume than estimated means that the surcharge in the production price to cover these corrections is charged more often to WEB, which means that the final amount of the compensation may exceed the original correction amount to be reimbursed. Conversely, the same happens at a volume lower than estimated. In view of the considerable financial consequences of even a small volume

[11] Beslissing op het bezwaar van ContourGlobal Bonaire B.V. tegen het besluit van 16 december 2016 tot vaststelling van de maximale productieprijs van elektriciteit voor het jaar 2017 voor ContourGlobal Bonaire B.V., document no. ACM/UIT/543827.
[12] Besluit van de Autoriteit Consument en Markt als bedoeld in hoofdstuk 4 van de Wet administratieve rechtspraak BES naar aanleiding van de bezwaren van ContourGlobal Bonaire B.V. gericht tegen het besluit van 30 november 2017 tot vaststelling van de maximale productieprijs van elektriciteit voor het jaar 2018 voor ContourGlobal Bonaire B.V., document no. ACM/UIT/561766.
[13] Besluit van de Autoriteit Consument en Markt als bedoeld in hoofdstuk 4 van de Wet administratieve rechtspraak BES naar aanleiding van de bezwaren van ContourGlobal Bonaire B.V. gericht tegen het besluit van 4 december 2018 tot vaststelling van de maximale productieprijs van elektriciteit voor het jaar 2019 voor ContourGlobal Bonaire B.V., document no. ACM/UIT/561770.
[14] Joint Court, October 21, 2020, ECLI:NL:OGHACMB:2020:197.

deviation, ACM considers this undesirable in this specific case and has opted to recalculate the effects of a volume deviation once in the 2024 tariffs.

5.3 Setting the maximum production price

112. The previous section states the permitted 2022 revenues for the production of electricity. In this section, ACM sets the maximum production price per kWh that ContourGlobal may charge distributor WEB in 2022.

113. The estimated production for 2022 is required in order to set the production price. ACM accepts the estimate by ContourGlobal. As described in section 5.1.3, ACM also uses this estimated volume for determining the allowed revenues, so it is therefore important that the production price is arrived at by dividing the allowed revenues by this same level of expected production volume.

114. This calculation and the result of this calculation are included in Annex 1 and Annex 2 to this decision.

5.4 Retrospective determination of differences

115. In section 5.2 of the method decision, ACM explains how it deals with differences between the determined allowed revenues and the actual costs incurred.

116. 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).

117. This retrospective examination will be carried out for 2022 with reference to the 2024 tariff proposal, when the actual costs of ContourGlobal for 2022 are revealed by the independent audit of the 2021 financial statements.

118. 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 electricity by ContourGlobal this concerns the estimate for the production volumes, as stated in Annex 1.

119. If these volumes turn out higher or lower, ACM will apply a correction before examining whether ContourGlobal incurred higher or lower costs than previously estimated. These differences are due to be determined in 2023 and ACM will incorporate any differences in the production price decision for 2024.

120. Finally, ACM notes that the actual cost of capital, as provided for in section 5.1.4, does not apply to the profit sharing, and that a one-off costing will take place on the one-off corrections, as described in paragraph 111.

6 Provisions

121. On the basis of Section 2.5, paragraph 1, of the BES Electricity and Drinking Water Act, ACM sets the maximum production price of electricity that ContourGlobal Bonaire B.V. will charge to the distributor for the electricity produced with effect from January 1st, 2022.

122. ACM sets this production price at 0,1606 USD kWh excluding the fuel component.

123. ACM determines the fuel component in USD/kWh as follows:

$$\text{Fuel component}_{\text{month t}} = \text{estimated fuel efficiency} \times \text{estimated share}_{\text{production with fuel}} \times \text{fuel price}_{\text{most recent}}$$

where the value that applies to the above parameters is determined in accordance with Annex 1 to this decision. Where multiple types of fuel are involved, the formula should be extended by performing the same calculation for each type of fuel, and then adding the individual components together in proportion to their share in the fuel mix to arrive at the composite fuel component for month t.

124. This decision and its annexes will be announced in the Government Gazette. ACM will also publish this decision on its website (www.acm.nl).

125. This decision comes into force on January 1st, 2022.

The Hague,

Netherlands Authority for Consumers and Markets,
on its behalf,

mr. dr. M. Aelen
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 chapter 5 of this decision. ACM has included the detailed calculation in the calculation model (Annex 2).

Key figures Tariff decisions CG 2022 - electricity		
Please note that all numbers are displayed in Dutch decimal system		
General parameters		
WACC 2020	%	6,20%
WACC 2022	%	6,08%
Estimated inflation 2021 for Bonaire	%	-1,80%
Estimated inflation 2022 for Bonaire	%	4,30%
Legal fixed interest rate (2017 - 2022)	%	3,00%
Profit sharing percentage	%	50,00%
Summary of cost data 2020 / 2022		
Estimation of RAV medio/ultimo 2022	USD	45.704.057
Estimated depreciation in 2022	USD	4.382.048
Regular OPEX realized in 2020	USD, price level 2020	6.895.185
Total expected costs for 2022 (for setting income level)		
Total OPEX estimation regular and additional OPEX	USD, price level 2022	7.062.228
Total capital costs estimation	USD, price level 2022	7.160.855
Total expected costs 2022 (= income level 2022 before corrections)	USD, price level 2022	14.223.083
(Regular) Corrections reimbursed in production price 2022		
Volume effect over 2020 (excl. fuel)	USD, price level 2020	265.256
Profit sharing effect over 2020	USD, price level 2020	-392.688
Fuel price and volume effect over 2020	USD, price level 2020	1.960.795
One-time corrections reimbursed in production price 2022		
Corr. for Beslissing op Bezwaar Productieprijsbeschikking 2017	USD, price level 2017	1.229.055
Corr. for Beslissing op Bezwaar Productieprijsbeschikking 2018	USD, price level 2018	1.226.423
Corr. for repairment of profit sharing over 2018, due to BoB 2018	USD, price level 2020	-98.320
Corr. for Beslissing op Bezwaar Productieprijsbeschikking 2019	USD, price level 2019	615.975
Corr. for repairment of profit sharing over 2019, due to BoB 2019	USD, price level 2019	-322
Corr. for Reimbursement of Breakage fee (reflects costs over 2019-2025)	USD, price level 2019	1.320.000
Corr. for volume data error in volume correction over 2019 (in Tariff 2021)	USD, price level 2019	215.527
Parameters on production		
Expected production by wind in 2022	kWh	36.000.000
Expected production by fuel in 2022	kWh	96.100.025
Total net production in 2022	kWh	132.100.025
Estimated LFO Fuel yield for 2022	liter / kWh	0,2732
Estimated share of fuel production in total net production for 2022	%	72,75%
LFO Price used for fuel component January 2022	USD / liter	0,7800
Fuel component in production price (January 2022)	USD, price level 2022 / kWh	0,1550
Production price electricity January 2022 incl. fuel	USD, price level 2022 / kWh	0,3156
Relevant parameters on variable costs		
Costs considered as variable in the costs estimation for 2022	USD, price level 2022	776.845
Variable costs expressed as a percentage of OPEX:	%	11,0%

Annex 2: Calculation of tariffs

ACM has published on its website (www.acm.nl) the 'CGB production price calculation 2022' Excel file, containing the calculation model including the calculation of the maximum production price for ContourGlobal. This file has been published as an annex to this decision, forms an integral part of it and can be found on the publication page of this decision at www.acm.nl.