



Decision

Our reference : ACM/UIT/567969

Case number : ACM/21/052522

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

Saba Electric Company N.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 productieprijis van elektriciteit per 1 januari 2022 voor Saba Electric 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 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. Saba Electric Company N.V. (hereinafter: SEC) is the producer of electricity on Saba.
3. In this decision, ACM sets the maximum production price that SEC will charge in 2022 as an internal transfer price for electricity.
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 SEC. 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 "SEC tariffs calculation 2022" Excel file (Annex 2), and the "profit sharing corrections for SEC tariffs 2022" 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, 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 SEC has a monopoly position on Saba, ACM is setting, through this decision, the maximum production price per kilowatt hour (kWh) that SEC may charge in the 2022 calendar year as the internal transfer price for electricity.
15. The aim of the regulation system is to prevent SEC charging an unreasonably high internal transfer price for the production of electricity.
16. It is also important that SEC is able to recoup the efficient costs that it incurs in the production of electricity. If SEC is reimbursed for its efficient costs (including a reasonable return), the necessary investments in quality, and therefore the security of supply of electricity, will be

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

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 SEC 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: 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 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 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 – 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).
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. SEC recognized the following provisions in the 2020 financial statements that relate partly to the production of electricity:
 - Provision to cover the maintenance of the production facilities.
66. ACM makes the following choice for this provision.
67. As agreed with its auditor, SEC will be including a new provision in its financial statements, from the year 2019. The provision is intended to cover the regular and non-regular maintenance of the production facilities, with the exception of the capital replacement. SEC is including this provision because of the fluctuating nature of these maintenance costs over time. ACM is using the estimate by SEC of the provision amount for 2022, and is including it as costs in the cost base for 2022.

Corrections to costs and revenues

68. 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.

69. For SEC, ACM has applied the following corrections to the costs and revenues.
70. On SEC's proposal, ACM has corrected the allocation of the provision to cover the maintenance of production facilities. SEC has explained that the allocation has been incorrectly accounted for, after which this item has been corrected in the 2020 financial statements.

Other costs and revenues

71. 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.
72. 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

73. 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 Saba 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.
74. 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

75. 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.
76. 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

⁶ Dit betreft de subsidies die door de ministeries EZK en I&W zijn toegekend aan de nutsbedrijven ter verlaging van de vastrechtstarieven 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>.

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

77. 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 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
78. In consultation with SEC, 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.
79. 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 25% of the total operational costs for the production of electricity as variable.

Applying the proportions of variable costs

80. 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.
81. 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.
82. 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.
83. 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

⁸ Decision setting the maximum electricity production price with effect from January 1st, 2020 for Saba Electric Company N.V., reference ACM/UIT/523602.

⁹ Apart from an increase in costs due to an increase in volume, account is also taken of inflation.

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

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. ACM has established that there are no major occurrences in the production of electricity by SEC for the years 2020, 2021 and 2022.

5.1.5 The calculation of the energy costs

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

Fuel component_{month t} = estimated fuel efficiency x
estimated share_{production with fuel} X fuel price_{most recent}

89. In applying the above formula, the producer is permitted to adjust the fuel costs monthly in 2022 as an internal transfer price. SEC is required to keep records of what fuel price and what quantities of fuel SEC has been using per month. When appropriate, ACM may also request the purchase agreements and paid invoices from SEC.

5.2 Determining the allowed revenues

90. 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.

91. 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.
92. 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
93. In the next sections, ACM describes how the corrections mentioned are carried out. ACM notes that corrections relating to the 2020 production price have not been incorporated into the production price for 2022 in every case. ACM may decide that the effects of corrections on tariffs may be expressed in the variable use tariff. If ACM so decides, it will give a reasoned explanation.
94. 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 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

95. 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

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.

of this decision.

96. 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.
97. The calculation and the result of the calculation are included in Annex 1 and Annex 2 to this decision.

5.2.2 Profit sharing

98. 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.
99. In Annex 1 and Annex 3 to this decision contains the numerical implementation of this methodology.

5.2.3 Fuel correction

100. The method states that companies must not be beneficially or detrimentally affected by rising or falling fuel prices.
101. 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.
102. 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.
103. 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.
104. 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.
105. 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.
106. 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.
107. The result of this calculation is included in Annex 1 and Annex 2 to this decision.

5.2.4 Other corrections

108. In 2019 and 2020, SEC incurred additional costs for the re-foundation of solar meadow 1 on Saba. SEC has initiated a lawsuit regarding the costs of the re-foundation against its contractor, which is currently on appeal before the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba. On September 12, 2019, the Minister of Economic Affairs and Climate (hereinafter: the Minister) made a policy commitment. The Minister has promised to cover 90% of the costs of the re-foundation if SEC cannot recover these costs from its contractor. SEC subsequently also incurred costs related to additional fuel costs, consultancy costs and legal costs. SEC has requested the Minister to reimburse these costs as well. The Minister subsequently specified and expanded the policy commitment on 10 November 2020 in order to reimburse a part of these costs. For this reason, ACM will correct SEC's costs in 2020 for so far they are part of the Minister's policy commitment.

5.3 Setting the maximum production price

109. 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 SEC is permitted to charge as the internal transfer price in 2022.
110. The estimated production for 2022 is required in order to set the production price. ACM accepts the estimate by SEC. 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.
111. 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

112. 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.
113. 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).
114. This retrospective examination will be carried out for 2022 with reference to the 2024 tariff proposal, when the actual costs of SEC for 2022 are revealed by the independent audit of the 2021 financial statements.
115. 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 SEC, this concerns the estimate for the production volumes, as stated in Annex 2.
116. If these volumes turn out higher or lower, ACM will apply a correction before examining whether SEC 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.

6 Provisions

117. 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 Saba Electric Company N.V. will charge as the internal transfer price for electricity with effect from January 1st, 2022.

118. ACM sets this production price at 0,2368 USD per kWh excluding the fuel component.

119. 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.

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

121. 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 models (Annex 2 and Annex 3).

Key figures Tariff decision SEC 2022 - Electricity		Unit		
Parameters				
WACC 2022	%		5,96%	
Estimated inflation 2022	%		3,2%	
Wettelijke rente CNL ('legal fixed interest rate')	%		3,0%	
			Electricity production	Electricity distribution
Variable part of operational costs in 2020	%		25%	25%
Variable part of capital costs in 2020	%		0%	50%
Summary of cost data 2020				
			Electricity production	Electricity distribution
Operational costs for regulatory cost base	USD, pl 2020		1.494.834	1.000.523
Regulated asset base (ultimo 2020)	USD		2.495.082	3.851.210
Depreciation in 2020	USD		131.031	282.720
Other income				
Total other income, to be netted with costs	USD, pl 2020		1.642	84.723
Data on corrections				
Volume-effect correction 2020	USD, pl 2022		8.215	8.878
Profit sharing: regular costs 2020	USD, pl 2022		171.807	56.439
Profit sharing: network losses 2020	USD, pl 2022		-	32.844
Fuel cost correction 2020	USD, pl 2022		126.162	-
Fuel component correction May-October 2021	USD, pl 2022		-	36.573
Correction for covered fuel savings 2020 (subsidy EZK)	USD, pl 2022		-69.661	-
Other parameters (expectations 2022)				
Total estimated production volume 2022	kWh		8.690.979	
Production by solar	kWh		3.351.672	
Production by fuel	kWh		5.493.479	
Own consumption powerplant	kWh		154.172	
Estimated production yield for fuel in 2022	Liter/kWh		0,270	
Most recent fuel price	USD/liter		0,7650	
Network losses	%			7,8%
Total capacity of the network	kVA			12.031
Note: 'pl' means price level				

Annex 2: Calculation of tariffs

ACM has published on its website (www.acm.nl) the 'Berekening tarieven SEC 2022' Excel file, containing the calculation model including the calculation of the maximum production price for SEC. 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.

Annex 3: Calculation of profit sharing correction

ACM has published on its website (www.acm.nl) the 'Berekening profit sharing correcties voor tarieven SEC 2022' Excel file, containing the calculation model including the profit sharing calculation model for SEC. 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.