



Decision

Our reference : ACM/UIT/545983
Case number : ACM/20/040016

Decision setting the maximum drinking water distribution tariffs with effect from January 1st, 2021 for:

St. Eustatius Utility Company N.V.

Setting by the Netherlands Authority for Consumers and Markets of the maximum drinking water distribution tariffs as referred to in Section 3.9, paragraph 4, and Section 3.14, paragraphs 1 and 2, of the BES Electricity and Drinking Water Act

This document is an English translation of the Dutch version “Beschikking tot vaststelling van de maximale distributietarieven van drinkwater per 1 januari 2021 voor St. Eustatius Utility Company N.V.”. In case of inconsistencies or possible interpretation differences between the Dutch version and this English translation, the Dutch version prevails.

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1 Introduction and reader's guide

1. Through this distribution tariff decision, the Netherlands Authority for Consumers and Markets (hereinafter: ACM) is implementing Section 3.9, paragraph 4, and Section 3.14, paragraph 1, of the BES Electricity and Drinking Water Act.¹ These provisions require ACM to set a reconnection tariff and, at the proposal of a distributor, to set the maximum distribution tariffs that this distributor will charge end-users for the distribution of drinking water (hereinafter referred to collectively as the distribution tariffs).
2. St. Eustatius Utility Company N.V. (hereinafter: STUCO) is the distributor of drinking water on Sint Eustatius.
3. In this decision, ACM sets the maximum distribution tariffs that STUCO will charge from January 1st, 2021 for the distribution of drinking water. Where ACM uses the words 'maximum tariffs' or 'maximum tariff' in this decision, it refers to the maximum tariffs or tariff that STUCO is permitted to charge.
4. In the case of electricity distribution, it concerns five types of tariff:
 - a. the connection tariff;
 - b. the fixed use tariff;
 - c. the variable use tariff;
 - d. the reconnection tariff;
 - e. the road transportation tariff (drinking water)
5. 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 the costs, revenues, and maximum distribution tariffs of <company>. This chapter also states how ACM will deal with any differences between allowed revenues and costs ultimately incurred. This decision also contains four annexes, namely an overview of the main calculated amounts (Annex 1), the set tariffs (Annex 2), the 'Calculation of <company> tariffs 2021' Excel file (Annex 3), and the 'Calculation of <company> profit sharing correction 2021' Excel file (Annex 4). Annex 3 and Annex 4 are published exclusively on the ACM website (www.acm.nl) and form an integral part of the decision.
6. This decision comes into force on January 1st, 2021.

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

7. 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.
8. 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).
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. Because STUCO has a monopoly position on Sint Eustatius, ACM is setting, through this decision, the maximum distribution tariffs that STUCO may charge to end-users of drinking water in the 2021 calendar year. STUCO may decide to charge lower tariffs to its end-users, with the exception of the reconnection tariff referred to in Section 3.9, paragraph 4, of the Act. This is because this is a flat-rate tariff.
16. The aim of the regulation system is to prevent STUCO from charging unreasonably high distribution tariffs to end-users of drinking water.

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

17. It is also important that STUCO is able to recoup the efficient costs that it incurs in the distribution of drinking water. If STUCO is reimbursed for its efficient costs (including a reasonable return), the necessary investments in quality, and therefore the security of supply of drinking water, will be safeguarded.

3 Connection with other decisions

18. 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 tariffs that distributors are permitted to charge end-users (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.
19. In this chapter, ACM describes how the distribution tariffs for the 2021 calendar year relate to the method decision that establishes the regulation system.

3.1 From method decision to production price and distribution tariff decision

20. 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.
21. In order to set a production price and a distribution tariff, ACM must apply a method that describes how the costs of a business lead to a tariff for the consumer. The legal basis of this method results from Section 2.5, paragraph 4, and Section 3.13, 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.”*

22. 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.”*

23. 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.
24. The aforementioned method applies for a period of six calendar years, from January 1st, 2020 to December 31st, 2025.
25. The BES Electricity and Drinking Water Act and the Ministerial Decree form the basis of the method. The method forms in turn 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 on the production and distribution of electricity and drinking water on Bonaire, Sint Eustatius and Saba. *Government Gazette* 2016, no. 33268.

3.2 The distribution tariff decision

26. Under Section 3.9 and Section 3.14 of the BES Electricity and Drinking Water Act, ACM is required to set four distribution tariffs and one reconnection tariff.

3.2.1 The connection tariff

27. Section 3.15 of the BES Electricity and Drinking Water Act specifies the maximum connection tariff and how ACM must set it:

“Section 3.15

- 1. The connection tariff takes into account the costs associated with the task referred to in Section 3.5, paragraph 1, preamble and part c.*
- 2. The connection tariff is charged on a one-off basis to every party connected to a network by a distributor.*
- 3. The level of the connection tariff depends on the size of the connection capacity and, if the length of the connection exceeds 25 meters, the length of the connection, and is expressed as a fixed amount in USD.*
- 4. If, on an end-user's connection with a length in excess of 25 meters, a new connection is installed for a different end-user, the end-user who has paid for the existing connection will receive partial compensation from a distributor.”*

28. The connection tariff is a one-off fee that an end-user pays to the distributor for a new connection to the electricity or drinking water network. The fee covers the costs that the distributor incurs for the connection in question. Under Section 3.15, paragraph 3, of the BES Electricity and Drinking Water Act, ACM must also set a so-called extended length tariff, for connections made at a distance of more than 25 meters from the network.

3.2.2 The fixed use tariff

29. Section 3.16 of the BES Electricity and Drinking Water Act describes what the fixed use tariff is and how ACM must set it:

“Section 3.16

- 1. The fixed use tariff takes into account the costs associated with the tasks referred to in Section 3.5, paragraph 1, preamble and sections a, b, d, and e.*
- 2. The fixed use tariff is charged to each end-user who receives electricity or drinking water on a connection and to each end-user who feeds electricity into the network.*
- 3. The level of the fixed use tariff depends on the size of the connection capacity, is calculated per connection and is expressed as a fixed amount in USD.*
- 4. A lower fixed use tariff may be set for certain categories of end-user. By ministerial decree, it is possible to specify that end-users with a low connection capacity are given a discount on the fixed use tariff, with the discount rate being specified in the decree.*
- 5. Costs associated with deliberate destruction by an end-user are charged individually to that end-user.”*

30. The fixed use tariff is a fixed amount that an end-user pays periodically (monthly) to the distributor. This amount covers the costs that the distributor incurs for the transportation and supply of electricity or drinking water (also referred to as distribution or network costs).

31. The level of the fixed use tariff may differ for different connection capacities. End-users with a small connection capacity pay a lower fixed use tariff than end-users with a large connection capacity. This is due to the costs that the distributor incurs. The larger the connection, the higher the distribution/network costs.

3.2.3 The variable use tariff

32. Section 3.17 of the BES Electricity and Drinking Water Act specifies what the variable use tariff is and how it must be set:

“Section 3.17

1. The variable use tariff takes into account the production price, referred to in Section 2.5, paragraph 1, and the costs associated with the tasks and obligations of a distributor, except costs associated with the tasks for which a connection tariff, fixed use tariff or road transportation tariff have been set.

2. The variable use tariff is expressed as an amount per kWh or per cubic meter of drinking water and is charged to each end-user who receives electricity or drinking water.

3. Notwithstanding paragraph 1 and Section 3.16, paragraphs 2 and 3, if a system of prepayment for a specific amount of electricity or drinking water is in place, a distributor may charge an end-user only a special variable use tariff to be set by the Netherlands Authority for Consumers and Markets. This special variable use tariff takes into account the fixed use tariff, referred to in Section 3.16, paragraph 1, on the basis of an annual consumption of electricity or drinking water to be specified in a ministerial decree.”

33. The variable use tariff is the amount that end-users pay to the distributor per purchased kilowatt-hour of electricity or per cubic meter of drinking water. The variable use tariff covers the costs of the production of drinking water and the part of the distribution/network costs not already taken into account in the fixed use tariff.

3.2.4 Road transportation tariff

34. Section 3.18 of the BES Electricity and Drinking Water Act specifies the road transportation tariff and how ACM must set it.

“Section 3.18

1. The road transportation tariff for drinking water takes into account the costs associated with the task referred to in Section 3.6, and is increased by the production price referred to in Section 2.5, paragraph

2. The road transportation tariff for drinking water is charged to each end-user who receives drinking water by a means of transport as referred to in Section 3.6.

3. The road transportation tariff is expressed as an amount in USD per cubic meter of drinking water.”

35. The road transportation tariff is the amount that end-users pay per cubic meter of drinking water for the distribution of drinking water by drinking water truck. This fixed cubic meter price for drinking water by truck includes the costs incurred by the distributor to supply drinking water by truck.

3.2.4 Reconnection tariff (flat-rate amount for reconnection)

36. Under Section 3.9, paragraph 4, of the BES Electricity and Drinking Water Act, ACM is required to set a reconnection tariff. This is a fixed amount that a distributor must charge an end-user to reconnect that end-user to the electricity or drinking water network after a previous disconnection.

“Section 3.9

1. (...)

2. (...)

3. (...)

4. A distributor charges an end-user a flat-rate amount to be specified by the Netherlands Authority for Consumers and Markets to reconnect that end-user if the disconnection is due to default on the part of the end-user.

5. By ministerial decree, more specific rules are set on the termination of the distribution of electricity or drinking water, on reconnection and the level of the flat-rate amount, and with regard to preventive measures to avoid termination as far as possible.”

37. Section 3.2 of the Decree on Electricity and Drinking Water in the BES Islands specifies the following with regard to the setting of the fixed (flat-rate) amount:

“Section 3.2

The flat-rate amount to be set by the Netherlands Authority for Consumers and Markets, referred to in Section 3.9, paragraph 4, of the Act in the case of reconnection, must not exceed the efficient costs that a distributor incurs for the reconnection.”

3.3 The process of setting the new distribution tariffs

38. On the basis of Article 2.1, paragraph 5, of the Ministerial Decree on Electricity and Drinking Water in the BES Islands, a distributor intending to amend distribution tariffs must submit any proposal to that effect to ACM three months before the intended date on which such an amendment is due to be implemented.
39. The distribution tariff proposal by STUCO referred to in the Ministerial Decree came into existence in the period from July to November 2020.

4 Legal protection

40. 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.
41. 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.
42. 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 (*Wet administratieve rechtspraak BES*) applies insofar as decisions within the meaning of that Act are concerned.
43. 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.
44. 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).
45. 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.
46. 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?

47. 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.
48. 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.
49. 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...

50. 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.
51. 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.
52. 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

53. Stakeholders may also choose to submit an administrative appeal to ACM first.
54. 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.
55. 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 distribution tariffs

56. 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.
57. 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. Annex 2 shows the set tariffs. The calculation models (Annexes 3 and 4) show the calculations made by ACM in order to calculate the maximum distribution price.
58. The profit-sharing methodology referred to in the method decision will be applied by ACM for the 2021 distribution prices. In this methodology, ACM looks back at 2019 to determine the difference between the estimated costs for 2019 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 4).

5.1 Determining the fixed and variable costs for each activity

59. A distributor'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 distribution tariffs in 2021 on the 2019 costs, as recorded in the financial statements, supplemented with additional information on the operating costs and assets that the distributor has sent to ACM.
60. In order to apply profit-sharing, ACM uses the estimated cost base drawn up for the setting of the 2019 distribution tariffs. ACM can apply this cost base retrospectively if it appears to be based on incorrect or incomplete data.
61. The application of profit-sharing then requires the actual costs for 2019. For this purpose, ACM uses the 2019 costs reported in the 2019 financial statements, in principle without corrections. ACM can therefore compare the 2019 estimate with the actual figures for 2019. Any corrections resulting from previous recalculations could constitute grounds to adjust the actual 2019 cost figures, in order to prevent any duplicated remuneration or duplicated repayment.
62. 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 2021 costs;
 2. a cost base for the estimate of the 2019 costs;
 3. a cost base for the actual 2019 figures.
63. 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.

64. 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 2019 and setting the allowed revenues for 2021 (section 5.2).

5.1.1 The capital costs

65. In order to estimate the capital costs for 2021, ACM must first determine the regulatory value of the assets. We call this the regulatory asset value (RAV).
66. The RAV consists of the fixed assets that the distributor uses to distribute drinking water and which it requires for its business operations. The RAV is therefore made up of the value of the assets that can be allocated directly or indirectly to the distribution of drinking water.
67. The depreciation of the RAV and a reasonable return on the RAV make up the capital costs. In principle, ACM uses the RAV set for the 2020 distribution tariffs, plus the investments that the distributor capitalized in 2019. This results in an RAV for ACM on December 31st, 2019 (2019 year-end). For specific large assets, ACM can also choose to base the estimated costs for the year 2021 on the expected average costs in 2021 for those specific assets. ACM does this when there are some very large assets that do not meet the assumption of continuous replacement. For STUCO, this applies to the estimate of the costs for the investments in the additional storage capacity made in 2020.
68. ACM sets the annual depreciation by applying the depreciation periods used by the distributor. ACM chooses not to take account of any residual value (the estimated amount that the distributor receives for the sale of the assets at the end of the expected lifetime). That is because a distributor must be able to recoup past efficient investments through the tariffs. ACM does, however, take account of actual proceeds of asset sales.
69. 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.
70. 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 distributor is permitted to capitalize the construction interest on assets under construction.
71. For the distribution of drinking water, ACM has set the RAV for the end of 2019 and the depreciation for 2019 in accordance with the amounts stated in Annex 1 to this decision.
72. ACM calculates the reasonable return that a distributor may achieve in 2021 by multiplying the RAV by the WACC that ACM has set for 2021.⁴ ACM adds the depreciation to this to determine the capital costs.

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

73. 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

5.1.2 The operating costs

74. The regulatory costs consist of both capital costs and operating costs. ACM estimates the 2021 operating costs on the basis of the operating costs in the adopted 2019 financial statements. On the basis of the allocation keys supplied by the distributor, ACM allocates the operating costs to the various activities: production and distribution of drinking water. ACM describes below which operating costs have been allocated (fully or partly) to the distribution of drinking water and the choices ACM has made with regard to a number of specific items. ACM also deals with the cost base for profit-sharing.
75. ACM does not consider all the operating costs recognized in the 2019 financial statements to be representative for the estimate of the 2021 costs. ACM therefore does not include a number of cost items in the cost base for 2021, or has estimated a different value for these cost items for 2021 than the amount entered in the financial statements in 2019. 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

76. 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 cost base. Depreciation is already included through the reimbursement of capital costs and is similarly not part of the operating costs.

Provisions

77. 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.
78. STUCO recognized the following provisions in the 2019 financial statements that relate partly to the distribution of drinking water:
79. For STUCO, ACM has not exercised any irregular options in its treatment of provisions in relation to the statement in the 2019 financial statements.

Corrections to costs and revenues

80. 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.

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

81. For STUCO, ACM has decided on the following options with regard to the correction of costs and other revenues.

82. Proposed by STUCO, ACM has corrected multiple costs, to align these better with the purpose of setting the regulatory cost base. ACM has investigated these corrections. With respect to the correction of the operational cost, ACM concluded that ACM approves all proposals by STUCO.

Other costs and revenues

83. ACM also takes account of activities carried out by the distributor for which ACM sets no tariff. These other activities must be kept wholly outside the tariff regulation, because otherwise they might be reimbursed twice.

84. 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.

85. Finally, ACM takes account of the costs and revenues that the distributor had in 2019 as a result of reconnections and fees for new connections. In setting the cost base, ACM includes only those costs that are reimbursed through the distribution tariff. The distributor can charge separate fees for reconnections and new connections. ACM deducts these amounts from the total cost level used to determine the revenues in 2021.

Inflation

86. In order to estimate the operating costs for 2021, 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 Sint Eustatius between the third quarter of year $t-1$ and the third quarter of year $t-2$. The values for the consumer price index are included in the calculation model in Annex 3.

5.1.3 Splitting fixed and variable costs

87. As mentioned in the introduction to this chapter and in marginals 82 to 86 of this method decision, ACM divides the total costs into a fixed and a variable component. This enables ACM to take better account of any expected rises in costs that are related to the increase in the distributed volume.

88. 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

89. 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.⁶

90. In consultation with STUCO, ACM has established that the calculation method used for tariff decisions for the year 2020 can also be used for the tariff decisions for the year 2021. ACM has carried out the calculation in question again, this time with more recent cost information. This has led to a slight change in the results of the calculation of the proportion of variable costs. The calculation method itself has not changed. The results of the calculation differ only marginally. In consultation with STUCO, ACM has determined the percentages at the level of the tariff decisions for the year 2021.
91. On the basis of the analysis and assumptions presented above, ACM has arrived at the following variable cost percentages:
- ACM regards 50% of the total capital costs for the distribution of electricity as variable.
 - ACM regards 30% of the total operational costs for the distribution of electricity as variable.

Applying the proportions of variable costs

92. 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.
93. First, ACM uses the split when determining the cost base for estimating the costs in 2021. The estimate of the costs in 2021 is based mainly on the actual costs in 2019. If an increase in volume is expected between 2019 and 2021, a corresponding increase in the related costs is inevitable.⁷ The degree to which the costs are expected to increase in 2021 compared to 2019 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 2019 and 2021, then an increase of 2% of the total costs related to the greater volume can be expected.
94. By taking any increase in volumes (and therefore the variable costs) into account when estimating the costs in 2021, it is possible to estimate more accurately what level of tariff covers costs in 2021. 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.
95. Second, ACM uses the splitting of fixed and variable costs for adjusting the estimated costs for 2019. 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 2019. 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 2019 differing from the volumes used when estimating the cost base for 2019. 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.
96. ACM introduced the splitting of fixed and variable costs in its 2020-2025 method decision. ACM also applies this split to the volume correction and profit sharing for the year 2019. ACM is of the opinion that this refinement will lead to improved remuneration of efficient costs, and will take

⁶ Beschikking tot vaststelling van de maximale distributietarieven van elektriciteit per 1 januari 2020 voor Saba Electric company, reference: ACM/UIT/524811.

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

greater account of the effects of the development of distribution volumes in the Caribbean Netherlands.

5.1.4 Developments in 2021

97. 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.
98. The estimated number of drinking water connections in 2021 is significantly greater than the number of actual connections in 2019. In the specific case of STUCO, ACM sees good reason to factor in this increase in the number of connections. First, the asset value of STUCO's drinking water distribution network is relatively limited when compared to the expected new investments. This is because a large proportion of the assets originate from contributions by third parties. Second, there has been a strong growth in the number of connections, and a marked increase is expected for the year 2021 as well. The expected increase in the number of connections would normally be accompanied by an increase in STUCO's asset value for the distribution of drinking water.
99. Given that the level of capital costs based on the actual asset value for 2019 is insufficiently representative of STUCO's actual capital costs for the distribution of drinking water in 2021 – because of the aforementioned reasons – ACM is factoring in a correction to the cost base for the tariffs in 2021 to allow for the expected increase in capital costs. ACM is calculating this correction by setting off the increase in asset value between 2016 and 2019 against the increase in the number of connections. ACM then multiplies the resultant increase in capital costs per connection by the expected increase in connections between 2019 and 2021 in order to determine the extra capital costs for the year 2021. The calculated extra costs will then be deemed variable costs by ACM.
100. In 2020 STUCO expanded its storage capacity for distribution. ACM takes the capital costs for this investment in 2021 into account when determining the fixed consumption rate for drinking water.

5.2 Setting the allowed revenues

101. The previous section describes how ACM determines the costs. In this section, ACM describes how it determines the allowed revenues. The allowed revenues for 2021 are based on the established costs, with three adjustments:
 - The expected variable costs will be adjusted for the expected 2021 volume. Account will be taken of the effects of any major occurrences.
 - The price level of the costs will be adjusted for 2021 by applying a correction for the expected rate of inflation.
 - When determining the revenues for 2021, ACM incorporates the results of several corrections related to previous years.
102. When determining allowed revenues, ACM takes expected volume developments for 2021 into account. The variable costs measured in 2019 can be expressed in a cost level *per unit of volume* by dividing the 2019 variable costs by the volume measured in 2019. Subsequently multiplying this cost level per unit of volume by the expected volume for 2021 results in the

expected cost level of variable costs for 2021. By then adding up the 2019 fixed costs, the expected cost level for 2021 is arrived at.

103. When determining the revenues for 2021, ACM incorporates the results of the following corrections:
 1. Volume correction for 2019
 2. Profit sharing for 2019
104. In the next sections, ACM describes how the corrections mentioned are carried out.
105. Finally, it is important when applying these corrections that there are always two tariffs in which a correction may be expressed: the fixed use tariff (a fixed amount per month, possibly depending on the connection capacity) and the variable use tariff (an amount for each kWh or m³ consumed). For each correction, ACM will state to which of these tariffs the correction applies.

5.2.1 Volume correction

106. ACM based the calculation of the 2019 use tariffs on a certain expected distribution volume. ACM corrects this volume if it turns out to be higher or lower. After all, the 2019 use tariffs are based on this volume: the fixed costs that ACM had estimated for 2019, divided by the estimated volume, form the fixed component of the distribution tariffs. If the actual volume is higher than estimated, then the distributor has received excessive coverage for the fixed costs through the distribution tariffs. And if the actual volume turns out lower than estimated, the distributor 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 a fixed and a variable component, as described in section 5.1.3 of this decision.
107. ACM calculates the volume correction amount by⁸ multiplying the fixed part of the use tariffs by the difference between the estimated and the actual volume. When performing the volume correction, ACM takes into account any loss of income from subsidy in the event of a negative correction. With a higher volume realized, ACM assumes that the coverage of the fixed costs will increase, but that coverage may actually be lower if part of the tariff is subsidized and this subsidy does not grow with increasing volumes. In this situation, the volume adjustment would decrease revenues that the distributor was actually only able to achieve partly. ACM prevents this by calculating which subsidy income the distributor has lost due to the higher realized volume and deducting this amount from the negative volume adjustment. In the event of a higher actual volume, the correction amount is negative. This means that the distributor has received too much and repays this amount (in the form of a discount) through the fixed use tariff for 2021 to the end-users.
108. The calculation and the result of the calculation are included in Annex 1 and Annex 4 to this decision.

5.2.2 Profit sharing

109. Section 5.1 describes how ACM determines the estimated 2019 cost base and the actual 2019 cost base. As laid down in the method, ACM applies the profit-sharing methodology to

⁸ The fixed use tariffs and the variable use tariff are jointly designated as distribution tariffs in the BES Electricity and Drinking Water Act. There is no difference in meaning between distribution tariffs and use tariffs.

encourage companies to make their operations efficient. By looking back at the estimated costs in 2019 (after the correction for the actual volume) and the actual costs in 2019, it is possible to see whether the distributor has incurred more or lower costs than previously estimated. Any difference is apportioned equally (50%) between the distributor and the end-user. The difference is expressed in the fixed use tariff, to the extent that it pertains to the distribution costs.

110. From 2020, ACM will be applying profit sharing to the costs of leakage losses. ACM will offset half the difference between the estimated and the actual leakage loss costs in the variable use tariff.
111. The numerical implementation of this methodology is included in Annex 1 and Annex 4 to this decision.

5.3 Setting the maximum distribution tariffs

112. The previous section states the allowed 2021 revenues for the distribution of drinking water. In this section, ACM sets the maximum distribution tariffs that STUCO is permitted to charge end-users.
113. ACM describes how it determines this for each type of tariff.

5.3.1 The connection tariff

114. ACM set the connection tariff for drinking water connections with effect from January 1st, 2020. On Sint Eustatius, all end-users of drinking water have the same connection capacity. This tariff applies to connections installed within 25 meters of the network.
115. ACM has also set the costs for a 'road crossing', i.e. when it is necessary to cross under a road to connect the end-user to the network.
116. ACM currently sees no reason to amend these tariffs, other than for inflation. The set connection tariff and the tariff for excavation works are included in Annex 2 to this decision.
117. ACM does not yet set a tariff per meter for standard connections located further than 25 meters from the network. ACM cannot currently set this tariff accurately due to a lack of reliable data. For the extended length tariff per additional meter above 25 meters, STUCO will issue a quotation to the end-user concerned and charge the end-user the costs of the extended length.

5.3.2 The fixed use tariff

118. The law provides that the level of the fixed use tariff may differ for different types of connection capacity. For drinking water, STUCO has a standard capacity. That is why, in the case of STUCO, ACM applies a single fixed use tariff for all end-users.
119. To calculate this tariff, ACM divides the total allowed revenues that STUCO can receive for the distribution network by the number of connections. For the year 2021, ACM is estimating the number of connections. This produces a revenue amount per connection per month.

120. The set fixed use tariffs are included in Annex 2 to this decision.

5.3.3 The variable use tariff

121. The variable use tariff, i.e. what an end-user pays for the drinking water he consumes, results from the setting of the drinking water production price set by ACM for 2021.
122. A further markup for leakage must be included in the production price. The transportation of drinking water to an end-user entails a loss of part of drinking water (due to leaks in the pipes). This affects all end-users.
123. Any other corrections are applied after adding the leakage losses, to the extent that they are covered in the descriptions in section 5.2. These correction amounts are expressed in an amount per unit (m³) by dividing them by the expected total distribution volume in 2021.
124. The set variable use tariff is included in Annex 2 to this decision.

5.3.4 The reconnection tariff

125. On July 1st, 2017, ACM set the reconnection tariff at USD 40. This tariff has remained unchanged. ACM sees no reason to amend this tariff from January 1st, 2021 and is maintaining the reconnection tariff at USD 40.

5.3.5 Road transportation tariff

126. ACM has set the cost of drinking water distributed by truck for 2021 (see section 5.2). STUCO has estimated the total quantity of drinking water that STUCO expects to distribute by truck in 2021. ACM has adopted this estimate.
127. The production price for drinking water (excluding leakage losses) plus a markup for the costs of distributing drinking water by truck results in a road transportation tariff for drinking water, as included in Annex 2 to these decisions.

5.4 Retrospective setting of differences

128. In section 5.2 of the method, ACM explains how it deals with differences between the determined allowed revenues and the actual costs incurred.
129. 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 distributor 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).
130. This retrospective examination will be carried out for 2021 with reference to the 2023 tariff proposal, when the actual costs of STUCO for 2021 are revealed by the independent audit of the

2021 financial statements.

131. ACM has stated in the method that this retrospective examination includes a correction for differences in volume. Specifically for the distribution of drinking water by STUCO, this concerns the estimate of the number of end-users, as stated in Annex 3.
132. If this volume turns out higher or lower, ACM will apply a correction before examining whether the STUCO incurred higher or lower costs than previously estimated. These differences are due to be set in 2022 and ACM will incorporate any differences in the distribution tariffs for 2023.

6 Provisions

133. On the basis of Section 3.14, paragraph 1, of the BES Electricity and Drinking Water Act, ACM sets the maximum drinking water distribution tariffs that St. Eustatius Utility Company N.V. will charge end-users from January 1st, 2021, in accordance with the amounts stated in Annex 2 to this decision.
134. On the basis of Section 3.9, paragraph 4, of the BES Electricity and Drinking Water Act, ACM sets the drinking water reconnection tariff that St. Eustatius Utility Company N.V. will charge end-users from January 1st, 2021 at USD 40.
135. This decision and its annexes will be announced in the Government Gazette. ACM will also publish this decision on its website (www.acm.nl).
136. This decision comes into force on January 1st, 2021.

The Hague,

Netherlands Authority for Consumers and Markets,
on its behalf,

F.E. Koel
Team Manager Energy Department

Filing a judicial or administrative appeal against this decision

Judicial appeal

Natural persons and legal persons whose interests have been directly affected by this decision may file a judicial appeal no later than six weeks after this decision was sent or issued. Stakeholders established on Saba or Sint Eustatius must submit their appeal in duplicate to the Registry of the Court on Sint Maarten. The address of the Registry is: Frontstreet 58 (The Courthouse), Philipsburg, Sint Maarten. Stakeholders established on Bonaire must submit their appeal in duplicate to the Registry of the Court on Bonaire. The address of the Registry is: Plaza 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 3 and Annex 4).

Key figures Tariff decisions STUCO 2021 - Drinking Water		Unit		
Parameters				
WACC 2021	%	6,01%		
Estimated inflation 2020	%	0,70%		
Estimated inflation 2021	%	-3,30%		
Expected percentage of drinking water delivered by truck in 2021	%	2,00%		
Percentage for profit sharing	%	50,00%		
Summary of cost data 2019				
		Water production	Water distribution	Water truck delivery
Operational costs 2019 (excl fuel)	USD, pl 2019	492.370	806.255	16.454
Other income 2019	USD, pl 2019	105	27.885	569
Regulated Asset Value (ultimo 2019)	USD	390.277	658.670	13.442
Depreciation over 2019	USD	44.626	68.627	1.401
Data on developments				
Additional RAB related to new investment	USD, pl 2021	773.634	1.012.365	
Additional depreciation related to new investment	USD, pl 2021	31.690	52.150	
Addition in RAB in 2021 due to growth of the water network	USD, pl 2021		115.596	
Addition in depreciation in 2021 due to growth of the water network	USD, pl 2021		14.472	
Data on corrections				
Volume-effect 2019	USD, pl 2021	-163.228	-22.383	-739
Profit sharing: regular costs 2019	USD, pl 2021	47.023	111.439	364
Profit sharing: network losses 2019	USD, pl 2021		45.247	
Energy costs correction 2020	USD, pl 2021	-11.865		
Allowance for bad debts	USD, pl 2021		428	9
Income level 2021				
Total estimated costs 2021 based on estimated volume 2021	USD, pl 2021	629.450	986.662	17.903
of which are the estimated variable costs per unit	USD, pl 2021 / #	0,49	-	3,08
plus extra variable capital costs per new water connection	USD, pl 2021 / #		211,74	
Income level 2021 after corrections	USD, pl 2021	501.380	1.075.718	17.537
Additional: total electricity costs for production of drinking water	USD, pl 2021	126.007		
Other parameters (expectations 2021 drinking water)				
Total estimated production volume	m3	133.303		
of which distributed by truck	m3			2.001
Required electricity for drinking water	kWh/m3	3,455		
kVA-connection for water production	kVA	85,5		
Network loss (estimated for 2021)	%		24,93%	
Expected number of connections 2021 (standard category)	#		940	

Note: 'pl' means price level

Annex 2: Overview of tariffs

In this annex, ACM presents the tariffs it has set in this decision. ACM has included the detailed calculation in the calculation model (Annex 3).

Distribution tariffs 2021	Unit	
Variable distribution tariff drinking water	USD, pp 2021 / m3	6,726
Fixed distribution tariff drinking water	USD, pp 2021 / month	95,41
Connection tariffs drinking water		
Tariff for reconnection	USD, pl 2021	40,00
Standard connection (incl. up to 25 meters)	USD, pl 2021	253,30
Tariff for road crossing for standard connection, per meter	USD, pl 2021	175,91
Distribution by truck		
Price drinking water by truck	USD, pp 2021 / m3	13,469

Annex 3: Calculation of tariffs

ACM has published on its website (www.acm.nl) the “Calculation of tariffs for STUCO in 2021” Excel file, containing the maximum distribution tariffs calculation model for STUCO. 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 4: Calculation of profit sharing correction

ACM has published on its website (www.acm.nl) the “Calculation of profit sharing corrections for STUCO tariffs in 2021” Excel file, containing the profit sharing calculation model for STUCO. 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.