



*Please note that, although every effort has been made to ensure this translation is accurate and consistent, it is for informational purposes only. In case of any dispute or inconsistencies, the Dutch version is authentic.*

## DECISION

**Our reference:** ACM/DE/2016/207759

**Case number:** 16.1264.52

# Decision setting the maximum production price of electricity for the 2017 calendar year for:

## ContourGlobal Bonaire B.V.

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

1/22



## 1 Contents

1	Contents .....	2
2	Introduction and reader's guide .....	3
3	Context of this decision.....	4
4	Connection with other decisions .....	6
4.1	From method decision to production price and rate decision.....	6
4.2	The ContourGlobal production price decision .....	8
5	Legal protection .....	10
5.1	What does this mean?.....	10
5.2	Direct judicial appeal.....	11
5.3	... or first an administrative appeal filed with ACM.....	11
6	Setting the production price .....	13
6.1	Determining the costs.....	13
6.1.1	The capital costs .....	13
6.1.2	The operating costs.....	15
6.1.3	Additionally entered operating costs .....	15
6.1.4	The calculation of fuel costs.....	17
6.1.5	Total costs.....	17
6.2	Determining the permitted revenues .....	17
6.3	Setting the maximum production price .....	18
6.4	Retrospective determination of differences .....	18
7	PROVISIONS .....	20
	Annex 1: Calculation model .....	22



## 2 Introduction and reader's guide

1. By means of this production price decision, the Netherlands Authority for Consumers and Markets (hereinafter: ACM) implements Article 2.5, paragraph 1, of the BES Electricity and Drinking Water Act.<sup>1</sup> Under that article ACM is required on 1 January of each year, on the proposal of a producer, to set the maximum production price which that producer will charge a distributor for the electricity it produces.
2. ContourGlobal Bonaire B.V. (hereinafter: ContourGlobal) is an electricity producer on Bonaire. ContourGlobal produces electricity using generators and wind turbines.
3. In this decision ACM sets the maximum production price which ContourGlobal will charge in 2017 to Water- en Energiebedrijf Bonaire N.V. (hereinafter: WEB) for the electricity produced by ContourGlobal and supplied to WEB.
4. This decision consists of a number of sections. Section 3 provides the context of this decision. Section 4 sets out the connection with other decisions. Section 5 is devoted to legal protection. Section 6 sets out successively the costs, revenues and maximum production price of ContourGlobal. That section also states how ACM will determine any differences retrospectively. This decision also includes an annex, namely the Excel file 'Calculation Model for ContourGlobal Electricity Production Price 2017'. That annex is published on the ACM website ([www.acm.nl](http://www.acm.nl)) and forms an integral part of the decision.
5. This decision comes into force on 1 January 2017.

---

<sup>1</sup> Law of 23 March 2016, containing rules on the production and distribution of electricity and drinking water on Bonaire, Sint Eustatius and Saba (*BES Electricity and Drinking Water Act*), *Stb.* 2016, 142.



### 3 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.<sup>2</sup> This is achieved in part through rate regulation.
7. Under Article 2.5 of the BES Electricity and Drinking Water Act, ACM's responsibilities include setting a maximum production price for electricity and drinking water and a maximum distribution rate for electricity and drinking water. The production price is charged by the producer to the distributor. The distribution rate is charged by the distributor to the end user (consumers and business customers).
8. The legislature has three objectives with the rate regulation legally entrusted to ACM. The first objective is consumer protection. Since 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, the maximum rates for those services are set by ACM.
9. The second objective of the rate regulation is investor protection. A stable and more predictable regulation climate enables the undertaking to make the necessary investments in the infrastructure and production capacity.
10. The third and final objective is the productive efficiency of the undertaking. This enables services of sufficient quality to be provided at the lowest possible cost.
11. The legislature uses cost orientation as its starting point in the rate regulation entrusted to ACM. That means electricity and drinking water rates are based solely on the costs of the company which produces and distributes those supplies.
12. A producer and a distributor of electricity have an interest in ensuring that they can recoup the efficient costs (including a reasonable return) which they incur in order to fulfil their statutory duties. A lack of competition could result in a producer and a distributor having insufficiently efficient operations, charging excessively high rates or, in the case of a distributor, discriminating between different types of end user. End-users could be disadvantaged in such cases. End-users therefore benefit from the promotion of efficiency in business practice.

---

<sup>2</sup> *Parliamentary papers II*, 2014-15, 34089, 3, p. 1.



13. The legislature has therefore entrusted ACM with the task of establishing a system of regulation that provides an incentive for both the producer and the distributor to operate just as efficiently as companies which face competition and to improve both quality and efficiency.
14. Since ContourGlobal has a (near-) monopoly position on Bonaire, in this decision ACM sets the maximum production price per kilowatt hour which ContourGlobal is permitted to charge WEB in 2017 for the electricity produced by ContourGlobal and supplied to WEB.
15. The aim of the regulation system is to prevent ContourGlobal charging WEB unreasonably high rates for the production of electricity. It is also important that ContourGlobal can recoup the efficient costs which it incurs in the production of electricity. If ContourGlobal is reimbursed for the efficient costs (including a reasonable return), the necessary investments in quality, and hence the security of supply of electricity, will not be endangered.



## 4 Connection with other decisions

16. Every year ACM issues separate decisions setting the maximum production price which a producer of electricity and drinking water is permitted to charge a distributor of electricity and drinking water. ACM also sets the maximum distribution rate which a distributor is permitted to charge an end user (consumers and businesses).
17. In this section ACM describes how the 2017 production prices relate to the method decision that establishes the regulation system.

### 4.1 From method decision to production price and rate decision

18. ACM's power to adopt a production price decision and a distribution rate decision results from Article 2.5, paragraph 1, and Article 3.14, paragraph 1, of the BES Electricity and Drinking Water Act.
19. In order to set a production price and a distribution rate ACM must apply a method. This method describes how the costs of a business lead to a rate for the consumer. The legal basis of this method also follows from Article 2.5, paragraph 4, and Article 3.14, paragraph 5, of the BES Electricity and Drinking Water Act.

#### *"Article 2.5*

1. *On 1 January of each year, on the proposal of a producer, the Netherlands Authority for Consumers and Markets sets the maximum production price which this producer will charge a distributor for the electricity or drinking water which it produces.*
2. *The production price for electricity or drinking water is based on the actual costs of production, allowing for a reasonable return, and includes the 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. *When setting the production price, the Netherlands Authority for Consumers and Markets will adopt a method which promotes efficient business practice.*
5. (...)
6. (...)
7. *By way of a ministerial decree, more specific rules are set with regard to the procedure and elements and the method used to calculate the production price, as referred to in this article.*



*Article 3.14*

*1. On the proposal of a distributor, the Netherlands Authority for Consumers and Markets sets the maximum rates which the distributor will charge the end users for the distribution of electricity or drinking water.*

*2. There are four distinct rates:*

- a. connection rate;*
- b. fixed use rate;*
- c. variable use rate;*
- d. road transportation rate for drinking water.*

*3. The rates may differ for different categories of end user.*

*4. The rates are non-discriminatory, transparent and based on the actual costs, allowing for a reasonable return and taking into account the subsidy, as referred to in Article 5.1.*

*5. In setting the rates, the Netherlands Authority for Consumers and Markets adopts a method which promotes efficient business practice.*

*6. The rates come into force on a date to be specified by the Netherlands Authority for Consumers and Markets and apply until 1 January of the year following the date of entry into force of the decision setting the rates with the exception of the variable use rate, which may be set on 1 January and 1 July of each calendar year.*

*7. If on 1 January the rates for that year have not yet been set, the most recently set rates will remain in force up to the date of entry into force of the decision setting the rates for the following year.*

*8. By way of a ministerial decree, more specific rules are set with regard to the procedure and elements and the method used to calculate the rates, as referred to in this article."*

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

*"Article 2.1*

*1. After consultation with the stakeholders the Netherlands Authority for Consumers and Markets adopts a method as referred to in Article 2.5, paragraph 4, and Article 3.14, paragraph 5, of the Act for a period of three to ten years.*

<sup>3</sup> Decree of the Ministry of Economic Affairs of 10 June 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.



*2. The method describes how the production price and the rates are set, in such a way that the method encourages efficient business practices by the producer and the distributor, provides a normal economic return and a reliable, affordable and sustainable supply of energy and drinking water.*

*3. The method specifies at least the method used to determine the expected efficient costs and to that end the method used to determine the normal 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 the intended start date of an amendment to the production price or the rates, a producer or distributor must submit a proposal to that effect to the Netherlands Authority for Consumers and Markets.”*

21. After consultation with stakeholders, comprising the various producers, distributors and end user organizations in the Caribbean Netherlands, ACM adopted the “Method for setting the rates for the production and distribution of electricity and drinking water in the Caribbean Netherlands 2017-2019” (hereinafter: method decision) on 30 September 2016. On 17 November 2016, ACM, also after consultation with stakeholders, adopted the method for the so-called Weighted Average Cost of Capital (hereinafter: WACC method), the permitted reasonable return for the companies concerned. The WACC method is an annex to the aforementioned method decision, of which it forms an integral part. ACM has published both methods on its website.
22. The method decision applies for a period of three calendar years, from 1 January 2017 up to and including 31 December 2019.
23. The Act and the Ministerial Decree form the basis of the method decision. The method decision then forms the basis of the production price decision and the distribution rate decision.

#### **4.2 The ContourGlobal production price decision**

24. 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.
25. In its external communication and also in the discussions with ContourGlobal, ACM stated that 1 January 2017 was the intended start date of the new rates. The date on which ContourGlobal should have submitted a production price proposal to ACM was therefore 1 October 2016.
26. In this case, however, that date proved not to be reasonable. An additional factor is that the period between consultation on the draft method and the draft WACC method (July and August



2016) and the adoption of both methods was so short that ContourGlobal could not reasonably be expected to submit a production price proposal to ACM on 1 October 2016. A further factor is that on 1 October 2016 ContourGlobal could not yet have a clear idea of the requirements which a production price proposal had to fulfil. In this case due care entailed non-compliance with the three-month period.

27. The way in which the production price decision comes about and what data are required for it from ContourGlobal did nevertheless become clear after 1 October 2016. During that period ACM and ContourGlobal worked closely together to gain insight into the costs incurred by ContourGlobal which could be involved in the rate regulation. ContourGlobal supplied the requested data to ACM with an accompanying explanation.
28. ACM then incorporated the data received from ContourGlobal in a calculation model, which ACM supplied to ContourGlobal. ContourGlobal then asked questions relating to it and also provided more detailed documents. ACM provided a further explanation to ContourGlobal representatives at various times. At the beginning of December 2016 the production price proposal referred to in the Ministerial Decree then came into existence.

*The process for determining the production price on 1 January 2018*

29. To determine the production price on 1 January 2018 ACM will enter into work agreements in consultation with ContourGlobal enabling both ContourGlobal and ACM to comply with the three-month period referred to in the Ministerial Decree.



## 5 Legal protection

30. In this section ACM describes the legal possibilities which stakeholders have to challenge the production price decision or the distribution rate decision. To that end ACM describes the applicable laws and procedural law.
31. Article 3, paragraph 1, heading and part a, of the Bonaire, St. Eustatius and Saba Public Entities Implementation Act specifies that the General Administrative Law Act, excepting 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.
32. Pursuant to Article 3, paragraph 2, of the Bonaire, St. Eustatius and Saba Public Entities Implementation Act, in the cases referred to in paragraph 1, the BES Administrative Justice Act (War-BES) applies insofar as decisions in the sense of that act are concerned.
33. On the basis of Article 3, paragraph 1, of the BES Administrative Justice Act, a decision is a written decision by an administrative body which is a legal act under public law and which is not of general scope.
34. Pursuant to Article 7, paragraph 1, of the BES Administrative Justice Act, natural persons and legal persons whose interests have been directly affected by a decision can appeal against it to the Court of First Instance of Bonaire, Sint Eustatius and Saba (the Court).
35. Based on Article 9, paragraph 1, of the BES Administrative Justice Act, an appeal can be made against a decision on the grounds that the decision conflicts with a generally binding provision or general principle of law.
36. Based on Article 55 of the BES Administrative Justice Act, natural persons and legal persons as referred to in Article 7, paragraph 1, of the BES Administrative Justice Act are authorized to lodge a complaint with ACM to protest the decision, and appeal to the Court after ACM has made a decision pertaining to the complaint.

### 5.1 What does this mean?

37. 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 bodies of Bonaire, Sint Eustatius and Saba. For this reason, the BES Administrative Justice Act



(instead of the General Administrative Law Act) applies to ACM's decisions pertaining to the implementation of the Act.

38. 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.
39. In order to be a stakeholder, the party must have its own sufficiently objective, personal or individual, direct and current interest (i.e. distinguishable from the interests of others). ACM will assess whether this is the case if natural persons or legal persons challenge this decision.

## 5.2 Direct judicial appeal...

40. Stakeholders can lodge 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.
41. 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 that Registry is: Frontstreet 58 (The Courthouse), Philipsburg, Sint Maarten.
42. Stakeholders established on Bonaire must submit their appeal in duplicate to the Registry of the Court on Bonaire. The address of that Registry is: Plasa Reina Wilhelmina (Fort Oranje), Kralendijk, Bonaire

## 5.3 ... or first an administrative appeal filed with ACM

43. Stakeholders may also choose first to submit an administrative appeal to ACM.
44. A substantiated administrative appeal must then be submitted to ACM no later than six weeks after this decision was sent or issued. The address is Kaya Internashonal z/n, P.O. Box 357, Kralendijk, Bonaire.
45. Stakeholders on Bonaire, Saba and Sint Eustatius can submit their administrative appeal to ACM by e-mail. The appeal must then be sent to: [marga.buys@acm.nl](mailto:marga.buys@acm.nl) and/or [laurens.jorg@acm.nl](mailto:laurens.jorg@acm.nl). ACM will send a confirmation of receipt. If the submitter of the appeal receives no confirmation of receipt from ACM, ACM urges the submitter to contact ACM on Bonaire by telephone: +599 781 0084 and/or +599 781 0281.



46. Stakeholders on Saba and Sint Eustatius who do not have an internet connection can submit the appeal in writing to the local office of Rijksdienst Caribisch Nederland (National Office for the Caribbean Netherlands) on their island.

On Saba the address is: The Bottom

On Sint Eustatius the address is: Mazinga Complex A, B, Fort Oranjestraat, Oranjestad.

47. After ACM has taken a decision on an administrative appeal, natural persons and legal persons who do not agree with it can file a judicial appeal.
48. The judicial or administrative appeal may also include arguments against the method decision of 30 September 2016 adopted by ACM and the WACC method of 17 November 2016 forming part of it.



## 6 Setting the production price

49. As stated in section 5.2 of the regulation method of 30 September 2016, ACM takes a number of steps in setting the production price.
- Step 1: Determining the costs;
  - Step 2: Determining how those costs lead to revenues;
  - Step 3: Determining how those revenues lead to rates;
  - Step 4: Determining how any differences between costs and revenues are subsequently settled.
50. ACM describes the above four steps in this section of this production price decision.

### 6.1 Determining the costs

51. ContourGlobal's costs consist of capital costs and operating costs. Capital costs comprise depreciation and a reasonable return. Operating costs are costs incurred by an undertaking to keep the business operating, such as personnel costs. ACM bases its cost determination for the setting of the production price on the 2015 costs, as recorded in the financial statements of ContourGlobal Bonaire, supplemented with additional information on the operating costs and assets which ContourGlobal has sent to ACM.

#### 6.1.1 The capital costs

52. In order to determine ContourGlobal's capital costs, ACM must first determine the regulatory value of ContourGlobal's assets. We call this the regulatory asset value (RAV).
53. ContourGlobal's regulatory assets consist of the fixed assets which ContourGlobal uses as a producer of electricity and which it requires for its business operation. These comprise the power plant, mainly consisting of the generators and the wind turbines, cabling, back-up facilities, measuring and control equipment, buildings and inventory.
54. The depreciation of the fixed assets and a reasonable return on the regulatory asset value make up the capital costs. ACM calculates the annual depreciation by dividing the balance of the historical cost of the power plant and the residual value by the term of the power purchase agreement (PPA) between ContourGlobal and WEB Bonaire N.V. This depreciation only concerns the decrease in value over the term of the PPA. The useful economic life of the power plant is longer, resulting in a transfer value (hereinafter: residual value) at the end of the term of the PPA.



55. The PPA was concluded on 27 November 2007 and has a term of 15 years from the so-called commercial operation date of 20 August 2010.
56. ACM normally bases its determination of the RAV on the historical cost which companies enter in their financial records. Since ContourGlobal did not include the power plant in its 2015 financial statements, ACM has to use other sources.
57. ACM has based its determination of the historical cost of the power plant on the report entitled "Findings – investigation into WEB-Bonaire (WEB-Ecopower project, hereinafter Mazars report) drawn up on 30 November 2015 (on behalf of the Ministry of Economic Affairs and the State Attorney).<sup>4</sup> In that report the historical cost is determined to be USD 61,734,000.
58. The costs for concluding the financing have been deducted from the historical cost, since these are already reimbursed by means of a 0.15% markup on the WACC<sup>5</sup>. In the Mazars report these costs have been determined to be USD 860,000.
59. ACM bases the residual value of the power plant on information from the PPA. The residual value is USD 18,696,000.
60. The depreciation over the entire term of the PPA, 15 years, amounts to USD 42,178,000 (i.e. USD 2,811,867 per year). This depreciation is the balance of the historical cost, the costs of concluding the financing and the residual value. In the period between first use and 31 December 2015 depreciation totalling USD 15,090,351 was recognized.
61. Having regard to the foregoing, ACM has arrived at the following RAV as at the end of 2015: USD 45,783,649.
62. ACM calculates the reasonable return by multiplying the RAV by the WACC which ACM has determined for 2017, namely 6.48%<sup>6</sup>. The result of that is USD 2,966,780. ACM then adds USD 2,811,867 of depreciation to this figure. The total capital costs thus amount to USD 5,778,647.

ContourGlobal has told ACM that the capital costs must also be calculated on an amount of USD 430,424. According to ContourGlobal's 2015 financial statements this concerns assets

<sup>4</sup> Annex to Letter to Parliament on Follow-up Investigation into Corporate Governance of Water- en Energiebedrijf Bonaire N.V. by State Attorney dated 29 February 2016, reference WJZ / 16012167

<sup>5</sup> Calculating the WACC for energy and water companies in the Caribbean Netherlands, ACM/DE/2016/206939, marginal 59

<sup>6</sup> Calculating the WACC for energy and water companies in the Caribbean Netherlands, ACM/DE/2016/206939, marginal 7 (electricity production only)



under construction. ACM does not include assets under construction in determining the RAV. An asset only forms part of the RAV if it has been taken into use. Companies are permitted to capitalize the construction interest on assets under construction.

### 6.1.2 The operating costs

63. The operating costs also form part of ContourGlobal's regulatory costs. ACM has based those costs on the 2015 financial statements supplied by ContourGlobal. As operating costs ACM takes into account an amount of USD 4,691,011. Of this amount USD 1,524,079 consists of personnel costs and USD 3,166,932 consists of other operating costs.
64. ContourGlobal's 2015 financial statements include an amount of USD 6,420,646 for cost of sales. An analysis provided by ContourGlobal shows that in addition to fuel this amount comprises USD 67,000 of fuel transport costs and USD 217,000 for the Fuel save warranty, as calculated and recorded in the PPA (Schedule 4, part B). Section 6.1.4 sets out the system used to bill for fuel in 2017. The fuel transport costs and the Fuel save warranty form part of ContourGlobal's regulatory operating costs.
65. The operating costs resulting from ContourGlobal's 2015 financial statements therefore amount to USD 4,975,011.

### 6.1.3 Additionally entered operating costs

66. After ACM had determined the regulation method, ContourGlobal entered additional operating costs supplementing the financial data it had provided earlier. These costs were not included in the 2015 financial statements.
67. These are overheads amounting to USD 912,901 and the costs of generator maintenance scheduled in 2017 and contractually agreed with "MAN" amounting to USD 761,144.
68. ContourGlobal argued that until the entry into force of the BES Electricity and Drinking Water Act on 1 July 2016 and the rate regulation established on the basis of it by ACM there was no reason to include those costs in the financial statements of ContourGlobal Bonaire. Now that ACM's rate regulation has created that possibility, ContourGlobal believes that these costs should be included in the 2015 operating costs.
69. ACM's view of these costs and the associated reasoning is as follows.



### 6.1.3.1 The overheads

70. When submitting this cost item to ACM, ContourGlobal stated that those costs related to personnel costs from 2015. More particularly they concern the costs of:
- the management of the ContourGlobal group;
  - the Caribbean Assets COO of ContourGlobal;
  - technical, financial and legal support.
71. In marginals 72 and 73 of the regulation method of 30 September 2016 ACM stated that in principle the most recent audited financial statements would always be used. This means that ACM will be using the costs for 2015 as a point of departure for calculating the rates for 2017. It is possible that the annual accounts do not contain all the information that ACM needs to set the rates, or that not all costs have yet been allocated to the company's various activities. ACM will then ask for this information by means of a request for information.
72. In contrast to the view apparently held by ContourGlobal, the aforementioned marginals in the regulation method should not be read as enabling a company to enter costs retrospectively as 2015 operating costs if, for reasons of its own, it has not included those costs in the 2015 financial statements, in order to have those costs form part of the total regulatory costs for 2015.
73. ACM considers that the additional personnel costs entered by ContourGlobal cannot therefore be included in the 2015 operating costs. ContourGlobal must bear the consequences of the fact that until recently it apparently saw no reason to include those costs in the 2015 financial statements of ContourGlobal Bonaire. In order to ensure that only actual costs verified by an independent auditor are included in the regulation, it is also important that goods and/or services are included on the basis of market prices, rates and conditions.

### 6.1.3.2 Generator maintenance costs

74. ContourGlobal has demonstrated that in 2017 it will incur maintenance costs of USD 761,144 (2015 price level), in addition to the maintenance costs incurred in 2015. ACM considers that these costs should be included in the operating costs, because they are important for the operational management of the power plant with which ContourGlobal also fulfils its contractual obligations with MAN.
75. Having regard to the amount stated in section 6.1.2 of this decision, ACM determines the total operating costs to be USD 4,975,011 + USD 761,144 = USD 5,736,155.



#### 6.1.4 The calculation of fuel costs

76. As ACM has stated in the method decision, the production price of electricity includes an energy cost component. That component comprises the costs of fuel. ACM determines the fuel costs as a monthly variable part of the production price.

77. In marginals 125 ff. of the method decision ACM has explained how the fuel costs should be calculated monthly as part of that production price. That calculation follows in this section.

78. The data which ACM takes into account in calculating the fuel costs are as follows:

- A technical yield of 4.20 (the number of kWh which ContourGlobal expects to produce with one litre of fuel, excluding wind energy production);
- The ratio of 95.5% heavy fuel oil (HFO share) to 4.5% light fuel oil (LFO share);
- The most recent fuel price (the price per litre which the producer has paid for the fuel used in month  $t$  in the most recently concluded purchase agreement for that fuel).

79. The fuel costs are then calculated on the basis of the following formula:

$$\text{Fuel costs}_{\text{month } t} = (\text{Technical yield} * \text{HFO share} * \text{fuel price HFO}_{\text{most recent}}) + (\text{Technical yield} * \text{LFO share} * \text{fuel price LFO}_{\text{most recent}})$$

80. With the application of the above formula, ContourGlobal is permitted to charge the fuel costs on to WEB monthly in 2017. ContourGlobal is required to submit to ACM a monthly statement of the fuel costs which it charges on to WEB and a statement of the most recent purchase invoices for HFO and LFO fuel.

#### 6.1.5 Total costs

81. In section 6.1.1 the total capital costs are determined to be USD 5,778,647. The total operating costs are determined in section 6.1.3 to be USD 5,736,155. The total costs thus amount to USD 11,514,802. These costs are at the 2015 price level.

#### 6.2 Determining the permitted revenues

82. The previous section states ContourGlobal's (efficient) costs. In this section ACM determines ContourGlobal's permitted revenues.



83. The permitted revenues are equivalent to the costs. In order to calculate those revenues for 2017, the total costs for 2015 must be adjusted for inflation. For these figures ACM uses data from Statistics Netherlands. For the inflation correction in year  $t$  ACM uses the percentage difference in the consumer price index for Bonaire between the third quarter of year  $t-1$  and the third quarter of year  $t-2$ . The estimated (expected) inflation which ACM calculates in this way for 2016 amounts to -0.9%, and that for 2017 amounts to 0.60%. The calculation is included in the calculation model in the annex.

84. The total permitted revenues for 2017 after inflation adjustment amount to USD 11,479,636.

### 6.3 Setting the maximum production price

85. ContourGlobal's permitted 2017 revenues were determined in the previous section. In this section ACM sets the maximum production price per kWh which ContourGlobal is permitted to charge WEB in 2017.

86. The total permitted revenues for 2017 amount to USD 11,479,636. The estimated production for 2017 is required in order to set the production price per kWh. ContourGlobal estimates this to be 105,500,000 kWh, including 33,900,000 kWh from wind turbine production and 71,600,000 kWh from generator production. ACM does not consider this estimate unreasonable, having regard to the scale of ContourGlobal's production in recent years.

87. The production costs per kWh thus amount to USD 0.1088/kWh. This excludes fuel. ContourGlobal is permitted to charge the fuel costs in accordance with the formula included in section 6.1.4.

88. The result of that formula for January 2017 based on invoices from November 2016 is USD 0.0574/kWh.

89. The total maximum production price for ContourGlobal for January 2017 thus amounts to USD 0.1662/kWh including fuel.

### 6.4 Retrospective determination of differences

90. In section 5.2 of the method ACM explains how it deals with differences between the determined permitted revenues and the actual costs incurred. In the operation of the chosen 'profit-sharing' methodology, the permitted revenues for a particular year are determined in advance and the difference between those revenues and the costs incurred by ContourGlobal 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).

91. This retrospective examination (the difference analysis) for 2017 is possible at the earliest in 2018, when ContourGlobal's actual costs are revealed by the independent audit of the 2017 financial statements.
92. ACM has stated in the method that this retrospective examination includes a correction for estimation errors and for changes resulting from energy costs. Specifically for the production of electricity by ContourGlobal, this concerns the following estimates:
  - Estimate of production volume from generators: 71,600,000 kWh
  - Estimate of production volume from wind: 33,900,000 kWh
93. If these estimates turn out higher or lower, ACM will apply a correction before examining whether ContourGlobal incurred higher or lower costs than previously estimated.
94. In so doing ACM takes account of expected production from the wind turbines based on the actual wind speeds. On the basis of those wind speeds and the technical specifications of those wind turbines supplied by ContourGlobal, ACM will determine how much electricity could have been produced using the wind turbines. ACM will correct any differences when setting the production price for 2019.



## 7 PROVISIONS

95. On the basis of Article 2.5, paragraph 1, of the BES Electricity and Drinking Water Act, the Netherlands Authority for Consumers and Markets sets the maximum production price of electricity which ContourGlobal Bonaire B.V. will charge for the 2017 calendar year to Water- en Energiebedrijf Bonaire N.V. for the electricity produced by ContourGlobal Bonaire B.V. and supplied to Water- en Energiebedrijf Bonaire N.V.
96. The Netherlands Authority for Consumers and Markets sets that production price at USD 0.1088/kWh excluding the fuel component. ACM determines the fuel component in USD/kWh as follows:  $\text{Fuel costs}_{\text{month } t} = (\text{technical yield} * \text{HFO share} * \text{fuel price HFO}_{\text{most recent}}) + (\text{technical yield} * \text{LFO share} * \text{fuel price LFO}_{\text{most recent}})$
97. This decision and its annex will be announced in the Government Gazette. The Netherlands Authority for Consumers and Markets will also publish this decision on its website ([www.acm.nl](http://www.acm.nl)).
98. This decision comes into force on 1 January 2017.

The Hague,

Date: 16 December 2016

Authority for Consumers and Markets,  
on its behalf,

F.J.H. Don  
board member



## 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 that 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 that Registry is: Plasa Reina Wilhelmina (Fort Oranje), Kralendijk, Bonaire.

### An administrative appeal can also be filed first with ACM

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.

#### *Submitting an administrative appeal to ACM on Bonaire*

Stakeholders on Bonaire can submit their administrative appeal by post to ACM or deliver it to ACM in person. The address is Kaya Internashonal z/n, P.O. Box 357, Kralendijk, Bonaire.

#### *Submitting an administrative appeal by e-mail*

Stakeholders on Bonaire, Saba and Sint Eustatius can submit their administrative appeal to ACM by e-mail. The appeal must then be sent to: [marga.buys@acm.nl](mailto:marga.buys@acm.nl) and/or [laurens.jorg@acm.nl](mailto:laurens.jorg@acm.nl). ACM will send a confirmation of receipt. If the submitter of the appeal receives no confirmation of receipt from ACM, ACM urges the submitter to contact ACM on Bonaire by telephone: +599 781 0084 and/or +599 781 0281.

#### *Submitting an administrative appeal at the local office of Rijksdienst Caribisch Nederland on Saba and Sint Eustatius*

Stakeholders on Saba and Sint Eustatius who have no internet connection can also submit the appeal in writing to the local office of Rijksdienst Caribisch Nederland on their island.

Saba: The Bottom

Sint Eustatius: Mazinga Complex A, B, Fort Oranjestraat, Oranjestad.



## Annex 1: Calculation model

ACM has published on its website ([www.acm.nl](http://www.acm.nl)) the Excel file “Calculation Model for ContourGlobal Electricity Price 2017” including the calculation model containing the calculation of the maximum production price for ContourGlobal. This file has been published as an annex to this decision, but forms an integral part of it and can be found on the publication page of this decision at [www.acm.nl](http://www.acm.nl).