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DECISION

Our reference: ACM/DE/2016/207762

Case number: 16.1266.52

**Decision setting the maximum production price
of drinking water for the 2017 calendar year for:**

Water- en Energiebedrijf Bonaire N.V.

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



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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.¹ 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 drinking water it produces.
2. Water- en Energiebedrijf Bonaire N.V. (hereinafter: WEB) is a drinking water producer on Bonaire.
3. In this decision ACM sets the maximum electricity production price which WEB will charge for the 2017 calendar year as an internal transfer price for drinking water.
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 WEB. That section also states how ACM will determine any differences retrospectively. This decision also includes an annex, namely the Excel file 'Calculation Model for WEB Drinking Water Production Price 2017'. That annex is published on the ACM website (www.acm.nl) and forms an integral part of the decision.
5. This decision comes into force on 1 January 2017.

¹ 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.² This is achieved in part through rate regulation.
7. Under 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 company to make the necessary investments in the infrastructure and production capacity.
10. The third and final objective is the productive efficiency of the company. This enables services of sufficient quality to be provided at the lowest possible cost.
11. 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 the efficiency in business practice.

² *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 WEB has a monopoly position on Bonaire, in this decision ACM sets the maximum production price per cubic metre of drinking water which WEB will charge for the 2017 calendar year as an internal transfer price for drinking water.
15. The aim of the regulation system is to prevent WEB charging an unreasonably high internal transfer price for the production of drinking water. It is also important that WEB can recoup the efficient costs which it incurs in the production of drinking water. If WEB is reimbursed for the efficient costs (including a reasonable return), the necessary investments in quality, and hence the security of supply of drinking water, 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 end-users.
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 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 of 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 on the BES Islands³. 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 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.

³ Decree of the Ministry of Economic Affairs of 10 June 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.



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: the 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 WEB production price decision

24. On the basis of Article 2.1, paragraph 5, of the Ministerial Decree on Electricity and Drinking Water on 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 WEB, ACM stated that 1 January 2017 was the intended start date of the new rates. The date on which WEB 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 WEB 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 WEB could not 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 WEB did nevertheless become clear after 1 October 2016. During that period ACM and WEB worked closely together to gain insight into the costs incurred by WEB which could be involved in the rate regulation. WEB supplied the requested data to ACM with an accompanying explanation.
28. ACM then incorporated the data received from WEB in a calculation model, which ACM supplied to WEB. WEB then asked questions relating to it and also provided more detailed documents. ACM provided a further explanation to WEB 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 WEB enabling both WEB 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 entities of Bonaire, Sint Eustatius and Saba. For this reason, the BES Administrative Justice Act (instead of the General Administrative Law Act) applies to the 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 An administrative appeal can also be filed first 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 and/or



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

6.1.1 The capital costs

52. In order to determine WEB's capital costs, ACM must first determine the regulatory value of WEB's assets. We call this the regulatory asset value (RAV).
53. WEB's regulatory assets consist of the fixed assets which WEB uses as a producer of drinking water and which it requires for its business operation. The water plant owned by WEB is fully depreciated. The fixed assets therefore include only the part of the indirect assets allocated to the production of water.
54. The depreciation of the fixed assets and a reasonable return on the regulatory asset value make up the capital costs. To determine the RAV and depreciation, ACM uses the detailed overview which WEB has sent to ACM with information on all the assets owned by WEB.
55. ACM bases its determination of the regulatory value of the fixed assets on the historical cost which companies enter in their financial records. By reducing the historical cost by the amount of accumulated appreciation, ACM arrives at the regulatory asset value as at 31-12-2015. Assets which WEB considers to be 'depreciated' or 'blocked' are not included in the RAV.



56. ACM determines the annual depreciation by applying the depreciation periods used by WEB. This excludes one-off writedowns resulting from the accelerated depreciation or divestment of an asset, because such one-off writedowns are not considered representative of depreciation charges in 2017.
57. If an asset has been financed with a subsidy or contributions from third parties, the historical cost is reduced by the amount of that subsidy and/or contribution. 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.
58. Having regard to the foregoing, ACM has arrived at an RAV for the production of drinking water by WEB of USD 441,166 at the end of 2015, with 2015 depreciation of USD 25,266.
59. ACM calculates the reasonable return by multiplying the RAV by the WACC which ACM has determined for 2017, namely 6.74%⁴. The result of that is USD 29,735. ACM adds to that amount USD 25,266 of depreciation. The total capital costs thus amount to USD 55,001.

6.1.2 The operating costs

60. The operating costs also form part of WEB's regulatory costs. ACM has based those costs on the 2015 financial statements supplied by WEB. WEB stated which part of the operating costs can be allocated directly to the production of drinking water. ACM then allocated WEB's indirect operating costs to the production of drinking water using the same allocation ratio. The electricity costs do not form part of these operating costs, because they are calculated separately. As operating costs for the production of water ACM takes into account an amount of USD 1,288,192.
61. If there were one-off revenues and expenses in 2015, ACM has deducted these from the operating costs because they are not representative of the 2017 costs. The largest item was a one-off inventory correction which leads to non-recurring revenues of USD 1,175,332. In addition, an amount of USD 850,000 was released from the maintenance provision in 2015. This income has also been deducted from the operating costs.

⁴ Calculating the WACC for energy and water companies in the Caribbean Netherlands, ACM/DE/2016/206939, marginal 7 (electricity & water combined)



6.1.3 Additionally entered operating costs

62. After ACM had determined the regulation method, it gave WEB the possibility of stating whether developments had taken place since 2015 which had not been included in the costs. WEB did not inform ACM of any such developments relating to the production of drinking water. ACM will therefore not add any additional operating costs to the total costs.

6.1.4 The calculation of fuel costs

63. As ACM has stated in the method decision, the production price of drinking water includes an energy cost component. That component comprises the costs of the electricity required to produce the drinking water. ACM determines this component for the whole of 2017.

64. The data which ACM takes into account in calculating these costs are as follows:

- The expected technical yield (how many kWh WEB requires to produce one cubic metre of drinking water);
- The costs of electricity.

65. ACM has determined the expected technical yield on the basis of the yield achieved in 2015, and that is 4.3 kWh per cubic metre of drinking water.

66. ACM determines the cost of electricity by weighting the production prices of electricity of ContourGlobal and WEB on the basis of the production volumes. ACM then adds the net losses, in order to determine the costs for electricity per kWh consumed.

67. The result of this calculation leads to a fuel component in the production price of drinking water of USD 0.9750/m³ of drinking water.

6.1.5 Total costs

68. In marginal58 the total capital costs are determined to be USD 55,001. The total operating costs have been determined in marginal 60 to be USD 1,288,192. No additional costs are added to the operating costs. The total costs thus amount to USD 1,343,193. These costs are at the 2015 price level.

6.2 Determining the permitted revenues

69. The previous section states WEB's (efficient) costs. In this section ACM determines WEB's permitted revenues for the production of water.

70. 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.

71. The total permitted revenues for the production of drinking water for 2017 after inflation adjustment amount to USD 1,339,091.

6.3 Setting the maximum production price

72. The previous section states WEB's permitted 2017 revenues. In this section ACM sets the maximum production price per cubic metre of drinking water which WEB is permitted to charge for the production of water.
73. The total permitted revenues for 2017 amount to USD 1,339,091. The estimated production is required in order to set the production price per m³. This is 1,703,649 m³, based on the estimate of the production volume for 2017. ACM does not consider this estimate unreasonable, having regard to the scale of WEB's production in recent years.
74. The production costs per m³ thus amount to USD 1.9235/m³, excluding the electricity costs.
75. Together with the energy component determined in section 6.1.4, this amounts to a maximum production price for 2017 of USD 2.8981/m³.

6.4 Retrospective determination of differences

76. 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 revenues for a particular year are determined in advance and the difference between those revenues and the costs incurred by WEB 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).
77. This retrospective examination (the difference analysis) for 2017 is possible at the earliest in 2018, when WEB's actual costs are revealed by the independent audit of the 2017 financial statements.



78. ACM has stated in the method that this retrospective examination includes a correction for estimation errors. Specifically for the production of drinking water by WEB, this concerns the following estimates:

- Estimate of production volume: 1,703,649 m3

79. If this estimate turns out higher or lower, ACM will apply a correction before examining whether WEB incurred higher or lower costs than previously estimated.



7 PROVISIONS

80. 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 drinking water which Water- en Energiebedrijf Bonaire N.V. will apply as an internal transfer price for drinking water in the 2017 calendar year.
81. The Netherlands Authority for Consumers and Markets sets that production price at USD 2.8981/m³.
82. 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).
83. 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 and/or 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) the Excel file “Calculation Model for WEB Drinking Water Price 2017” including the calculation model containing the calculation of the maximum production price for WEB. 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.