



## Decision

Our reference : ACM/UIT/611406  
Subject : ACM/23/181659  
Date : 8th December 2023

### Decision setting the maximum electricity production price with effect from January 1st, 2024 for:

#### ContourGlobal Bonaire B.V.

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

**This document is an English translation of the Dutch version “Beschikking tot vaststelling van de maximale productieprijis van elektriciteit per 1 januari 2024” In case of inconsistencies or possible interpretation difference between the Dutch version and this English translation, the Dutch version prevails**

## Contents

<b>1</b>	<b>Introduction and reader's guide</b>	<b>3</b>
<b>2</b>	<b>Context of this decision</b>	<b>4</b>
<b>3</b>	<b>Connection with other decisions</b>	<b>5</b>
3.1	From method decision to production price and tariff decision	5
3.2	The process of setting the production price	6
<b>4</b>	<b>Legal protection</b>	<b>7</b>
4.1	What does this mean?	7
4.2	Direct judicial appeal...	7
4.3	... or first an administrative appeal filed with ACM	8
<b>5</b>	<b>Setting the production price</b>	<b>9</b>
5.1	Determining the fixed and variable costs of each activity	9
5.1.1	The capital costs	10
5.1.2	The operating costs	10
5.1.3	Splitting fixed and variable costs	12
5.1.4	Developments for 2024	13
5.1.5	The calculation of the energy costs	14
5.2	Determining the allowed revenues	14
5.2.1	Volume correction	15
5.2.2	Profit sharing	15
5.2.3	Fuel correction	16
5.2.4	Other corrections	16
5.3	Setting the maximum production price	17
5.4	Retrospective determination of differences	17
<b>6</b>	<b>Provisions</b>	<b>18</b>
	<b>Annex 1: Overview of amounts</b>	<b>20</b>
	<b>Annex 2: Calculation of tariffs</b>	<b>21</b>

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## 1 Introduction and reader's guide

1. By means of this production price decision, the Netherlands Authority for Consumers and Markets (hereinafter: ACM) implements Section 2.5, paragraph 1, of the BES Electricity and Drinking Water Act.<sup>1</sup> Under this section, ACM is required, on the proposal of a producer, to set the maximum production price that this producer will charge a distributor for the electricity it produces.
2. ContourGlobal Bonaire B.V. (hereinafter: ContourGlobal) is the producer of electricity on Bonaire.
3. In this decision, ACM sets the maximum production price that ContourGlobal will charge in 2024 to Water- en Energiebedrijf Bonaire N.V. (hereinafter: WEB) for the electricity produced by ContourGlobal and supplied to WEB.
4. This decision consists of a number of chapters. Chapter 2 provides the context of this decision. Chapter 3 sets out the connection with other decisions. Chapter 4 is devoted to legal protection. Chapter 5 sets out successively the costs, the revenues, the application of corrections and the final maximum production price of ContourGlobal. This chapter also states how ACM will deal with any differences between allowed revenues and costs ultimately incurred. This decision also contains two annexes, namely an overview of the main calculated amounts (Annex 1) and the “CGB production price calculation 2024” Excel file (Annex 2). Annex 2 is published exclusively 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 January 1st, 2024.

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

## 2 Context of this decision

6. The BES Electricity and Drinking Water Act aims to ensure reliable, sustainable and affordable supplies of electricity and drinking water on Bonaire, Sint Eustatius and Saba.<sup>2</sup> One way of achieving this is the regulation of tariffs.
7. Under Section 2.5, Section 3.9, paragraph 4, and Section 3.14 of the BES Electricity and Drinking Water Act, ACM's responsibilities include setting a maximum production price for electricity and drinking water and maximum distribution tariffs for electricity and drinking water. The production price is charged by the producer to the distributor. The distribution tariffs are charged by the distributor to the end-user (consumers and business customers).
8. Lawmakers have three objectives with the tariff regulation legally entrusted to ACM. The first objective is consumer protection. Because end-users in the Caribbean Netherlands cannot negotiate on the price of electricity or drinking water and because they are not free to choose the company from which they purchase their electricity or drinking water either, the maximum tariffs for these services are set by ACM.
9. The second objective of tariff regulation is to protect investors. A stable and predictable regulation climate enables the company to make the necessary investments in infrastructure and production capacity.
10. The third and final objective is the productive efficiency of the company. This enables services of sufficient quality to be provided at the lowest possible cost.
11. Lawmakers use cost orientation as the starting point in the tariff regulation entrusted to ACM. That means that electricity and drinking water tariffs are based solely on the costs incurred by the company for those services.
12. Producers and distributors of electricity and drinking water have an interest in ensuring that they can recoup the efficient costs (including a reasonable return) that they incur in order to fulfill their statutory tasks. A lack of competition may result in a producer and a distributor operating inefficiently and consequently charging excessively high tariffs. End-users would be disadvantaged in such cases. End-users therefore benefit from the promotion of efficiency in business practice.
13. Lawmakers have therefore entrusted ACM with the task of establishing a regulation system that provides an incentive for both the producer and the distributor to operate as efficiently as companies that do face competition, and to guarantee quality.
14. Because ContourGlobal (more or less) has a monopoly position on Bonaire, ACM is setting, through this decision, the maximum production price per kilowatt hour (kWh) that ContourGlobal may charge in the 2024 calendar year as the production price for electricity.
15. The aim of the regulation system is to prevent ContourGlobal charging an unreasonably high production price for the production of electricity.
16. It is also important that ContourGlobal is able to recoup the efficient costs that it incurs in the production of electricity. If ContourGlobal is reimbursed for its efficient costs (including a reasonable return), the necessary investments in quality, and therefore the security of supply of electricity will be safeguarded.

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

### 3 Connection with other decisions

17. Every year, ACM issues separate decisions setting the maximum production price that producers of electricity and drinking water are permitted to charge distributors of electricity and drinking water. ACM also sets the maximum distribution tariff that a distributor is permitted to charge an end-user (consumers and businesses). Maximum prices and maximum tariffs mean that the prices and tariffs charged by a producer or distributor must not exceed the prices and tariffs set by ACM.
18. In this chapter, ACM describes how the production prices for the 2024 calendar year relate to the method decision that establishes the regulation system.

#### 3.1 From method decision to production price and tariff decision

19. ACM's power to adopt a production price decision and a distribution tariff decision results from Section 2.5, paragraph 1, and Section 3.14, paragraph 1, of the BES Electricity and Drinking Water Act.
20. In order to set a production price and distribution tariffs, ACM must apply a method that describes how the costs of a business lead to a tariff for the end-user. The legal basis of this method results from Section 2.5, paragraph 4, and Section 3.14, paragraph 5, of the BES Electricity and Drinking Water Act:

*“Section 2.5*

1. *On January 1st of each year, on a proposal from a producer, the Netherlands Authority for Consumers and Markets sets the maximum production price that this producer will charge a distributor for the electricity or drinking water that it produces.*
2. *The production price for electricity or drinking water is based on the actual production costs, allowing for a reasonable return, and includes operating and maintenance expenses, energy costs and capital expenses.*
3. *Notwithstanding the first paragraph, the energy costs may be set as a monthly variable part of the production price.*
4. *In setting the production price, the Netherlands Authority for Consumers and Markets applies a method that promotes efficient business practice.*
5. *(...)*
6. *(...)*
7. *By ministerial decree, more specific rules are set with regard to the procedure and elements and the method used to calculate the production price referred to in this section.*

*Section 3.14*

1. *On a proposal from a distributor, the Netherlands Authority for Consumers and Markets sets the maximum tariffs that the distributor will charge end-users for the distribution of electricity or drinking water.*
2. *There are four distinct tariffs:*
  - a. *connection tariff;*
  - b. *fixed use tariff;*
  - c. *variable use tariff;*
  - d. *road transportation tariff for drinking water.*
3. *The tariffs may differ for different categories of end-user.*
4. *The tariffs are non-discriminatory, transparent and based on the actual costs, allowing for a reasonable return and taking into account the subsidy referred to in Section 5.1.*
5. *In setting the tariffs, the Netherlands Authority for Consumers and Markets applies a method that promotes efficient business practice.*
6. *The tariffs come into force on a date to be specified by the Netherlands Authority for Consumers and Markets and apply until January 1st of the year following the date of entry into force of the decision setting the tariffs, with the exception of the variable use tariff, which may be set on January 1st and July 1st of each calendar year.*

7. *If on January 1st the tariffs for that year have not yet been set, the most recently set tariffs will remain in force up to the date of entry into force of the decision setting the tariffs for the following year.*
8. *By ministerial decree, more specific rules are set with regard to the procedure and elements and the method used to calculate the tariffs, as referred to in this section.”*

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

*“Article 2.1*

1. *After consultation with stakeholders, the Netherlands Authority for Consumers and Markets adopts a method referred to in Section 2.5, paragraph 4, and Section 3.14, paragraph 5, of the Act for a period of three to ten years.*
2. *The method describes how the production price and the tariffs are set, in such a way that the method encourages efficient business practices by the producer and the distributor, provides a reasonable economic return and a reliable, affordable, and sustainable supply of energy and drinking water.*
3. *The method specifies at least how the expected efficient costs are determined and, to that end, the method used to determine what constitutes a reasonable economic return.*
4. *The method lays down the way in which the energy costs are determined as part of the production price.*
5. *Three months before any intended date of entry into force of an amendment to the production price or the tariffs, a producer or distributor must submit a proposal to that effect to the Netherlands Authority for Consumers and Markets.”*

22. After consultation with stakeholders, comprising the various producers, distributors and end-user organizations in the Caribbean Netherlands, ACM adopted the “Method for setting the tariffs for the production and distribution of electricity and drinking water in the Caribbean Netherlands 2020-2025” (hereinafter: the method) on September 25th, 2019. On October 24th, 2022, also after consultation with stakeholders, ACM adopted the method for the so-called Weighted Average Cost of Capital (hereinafter: the WACC method), the permitted reasonable return for the companies concerned. The WACC method is an annex to the aforementioned method, of which it forms an integral part. ACM has published both methods on its website.
23. The aforementioned method applies for a period of six calendar years, from January 1st, 2020 to December 31st, 2025.
24. The BES Electricity and Drinking Water Act and the Ministerial Decree form the basis of the method. The method then forms the basis of the production price decision and the distribution tariff decision.

### 3.2 The process of setting the production price

25. On the basis of Article 2.1, paragraph 5, of the Ministerial Decree on Electricity and Drinking Water in the BES Islands, a producer must submit an appropriate proposal to ACM three months before the intended start date of the production price amendment.
26. The production price proposal by ContourGlobal referred to in the Ministerial Decree came into existence in the period from July to November 2023.

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<sup>3</sup> Decree of the Ministry of Economic Affairs of June 10th, 2016, no. WJZ/15003661, containing rules for the production and distribution of electricity and drinking water on Bonaire, Sint Eustatius and Saba. *Government Gazette* 2016, no. 33268.

## 4 Legal protection

27. In this chapter, ACM describes the legal means available to stakeholders to challenge the production price decision or the distribution tariff decision. To that end, ACM describes the applicable laws and procedural law.
28. Section 3, paragraph 1, preamble and part a, of the Bonaire, Sint Eustatius and Saba Public Entities Implementation Act states that the General Administrative Law Act, with the exception of Chapter 9, does not apply to the decisions and actions of administrative bodies established in the European part of the Netherlands for the implementation of legislation that applies only within the public entities.
29. Pursuant to Section 3, paragraph 2, of the Bonaire, Sint Eustatius and Saba Public Entities Implementation Act, in the cases referred to in paragraph 1, the BES Administrative Justice Act applies insofar as decisions within the meaning of that Act are concerned.
30. Under Section 3, paragraph 1, of the BES Administrative Justice Act, a decision is defined as a written decision by an administrative body that is a legal act under public law and that is not of general scope.
31. Pursuant to Section 7, paragraph 1, of the BES Administrative Justice Act, natural persons and legal persons whose interests have been directly affected by a decision can appeal against it to the Court of First Instance of Bonaire, Sint Eustatius and Saba (hereinafter: the Court).
32. On the basis of Section 9, paragraph 1, of the BES Administrative Justice Act, a judicial appeal can be lodged against a decision on the grounds that the decision conflicts with a generally binding provision or a general legal principle.
33. Under Section 55 of the BES Administrative Justice Act, natural persons and legal persons as referred to in Section 7, paragraph 1, of the BES Administrative Justice Act are authorized to lodge an administrative appeal with ACM to protest the decision, and to appeal to the Court only after ACM has made a decision pertaining to the administrative appeal.

### 4.1 What does this mean?

34. ACM is established in the European part of the Netherlands and its responsibility is to ensure compliance with the BES Electricity and Drinking Water Act. This Act only applies to the public entities of Bonaire, Sint Eustatius and Saba. For this reason, the BES Administrative Justice Act (rather than the General Administrative Law Act) applies to ACM's decisions pertaining to the implementation of the Act.
35. Natural persons and legal persons (people and companies) whose interests have been directly affected by this decision (stakeholders) can directly file a judicial appeal against this decision or may first file an administrative appeal with ACM.
36. In order to be a stakeholder, the party must have its own sufficiently objective, personal or individual (i.e. distinguishable from the interests of others), direct and current interest. ACM will assess whether this is the case if natural persons or legal persons challenge this decision.

### 4.2 Direct judicial appeal...

37. Stakeholders can file a judicial appeal directly. A substantiated appeal must be submitted to the Registry of the Court no later than six weeks after this decision was sent or issued.
38. Stakeholders established on Saba or Sint Eustatius must submit their appeal in duplicate to the Registry of the Court on Sint Maarten. The address of the Registry is: Frontstreet 58 (The

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Courthouse), Philipsburg, Sint Maarten.

39. Stakeholders established on Bonaire must submit their appeal in duplicate to the Registry of the Court on Bonaire. The address of the Registry is: Plasa Reina Wilhelmina (Fort Oranje), Kralendijk, Bonaire.

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

40. Stakeholders may also choose to submit an administrative appeal to ACM first.
41. A substantiated administrative appeal can be submitted to ACM no later than six weeks after this decision was sent or issued. Stakeholders can submit their administrative appeal to ACM by e-mail. The appeal must be sent to: [procedurescn@acm.nl](mailto:procedurescn@acm.nl). ACM will send confirmation of receipt. If the submitter of the appeal receives no confirmation of receipt from ACM, ACM urges the submitter to contact ACM by telephone on: +31 (0)70 722 23 13.
42. The judicial or administrative appeal may also include arguments against the method of September 25th, 2019 adopted by ACM and the WACC method of October 24th, 2022 forming part of it.



## 5 Setting the production price

43. As stated in section 5.2 of the regulation method of September 25th, 2019, ACM takes a number of steps in setting the production price:
- Step 1: Determining the fixed and variable costs for each activity;
  - Step 2: Determining how the costs lead to revenues;
  - Step 3: Determining how the revenues lead to tariffs;
  - Step 4: Determining how any differences between costs and revenues are offset retrospectively.
44. ACM describes the above four steps in this chapter. In Annex 1 to this decision, ACM provides an overview of the amounts calculated in this chapter. The calculation model (Annex 2) shows the calculations made by ACM in order to calculate the maximum production price.
45. The profit-sharing methodology referred to in the method decision will be applied by ACM for the 2024 production price. In this methodology, ACM looks back at 2022 to determine the difference between the 2022 estimated costs and the actual costs for that year, after any corrections. The implementation of this methodology is dealt with in the following sections and has been developed into the calculation model (see Annex 2).

### 5.1 Determining the fixed and variable costs of each activity

46. A producer's costs consist of capital costs and operating costs – sometimes referred to as the regulatory costs. Capital costs comprise depreciation and a reasonable return (WACC) on the invested capital. Operating costs are costs incurred by a company to keep the business operating, such as personnel costs. ACM bases its cost determination for the setting of the production price in 2024 on the 2022 costs, as recorded in the financial statements, supplemented with additional information on the operating costs and assets that the producer has sent to ACM.
47. In order to apply profit-sharing, ACM uses the estimated cost base drawn up for the setting of the 2022 production price. ACM can apply this cost base retrospectively if it appears to be based on incorrect or incomplete data.
48. The application of profit-sharing then requires the actual costs for 2022. For this purpose, ACM uses the 2022 costs reported in the 2022 financial statements, in principle without corrections. ACM can therefore compare the 2022 estimate with the actual figures for 2022. Any corrections resulting from previous recalculations could constitute grounds to adjust the actual 2022 cost figures, in order to prevent any duplicated remuneration or duplicated repayment.
49. In summary, ACM proposes setting different cost bases for the different objectives of the tariff regulation. There are three cost bases:
1. a cost base for the estimate of the 2024 costs;
  2. a cost base for the estimate of the 2022 costs;
  3. a cost base for the actual 2022 figures.
50. Components of these three cost bases may differ. For each component, ACM will state below whether that is the case and, if so, in what way.
51. Finally, it is important that ACM subdivides costs into fixed and variable costs, from the start of the 2020-2025 regulatory period. The starting point here is that variable costs are assumed (on a pro-rata basis) to increase or decrease as the volume develops, while fixed costs are not affected by how the volume develops. In marginals 82 to 86 of the method decision, ACM has described how and why it makes a division between fixed and variable costs. This is expanded upon in this tariff decision by means of a description of the division that has been made, and why (section 5.1.3), and how this division is applied when carrying out the volume correction for 2022 and setting the allowed revenues for 2024 (section 5.2).

### 5.1.1 The capital costs

52. In order to estimate the capital costs for 2024, ACM must first determine the regulatory value of the assets. We call this the regulatory asset value (hereinafter: RAV).
53. The RAV consists of the fixed assets that the producer uses to produce electricity and that it requires for its business operation. The RAV is therefore made up of the value of the assets that can be allocated directly or indirectly to the production of electricity.
54. The depreciation of the RAV and a reasonable return on the RAV make up the capital costs. ACM in principle uses the RAV determined for the 2023 production price, plus the investments that the producer capitalized in 2022. This results in an RAV for ACM on December 31st, 2022 (2022 year-end). For specific large assets, ACM may also decide to base the estimated costs for the year 2024 on the expected average costs in 2024 of these specific assets. ACM does this where there are a few very large assets that do not meet the assumption of continuous replacement. For CGB, this applies to the initial investment in the production facility and to the expansions that CGB has made in 2019 (generators and battery system). This system is also applied to estimate the investments that CGB will make in 2024 in the solar park and expansion of the battery capacity and for a number of other investments that are expected in 2024 (section 5.1.4).
55. ACM determines the annual depreciation by applying the depreciation periods used by the producer. ACM chooses not to take account of any residual value (the estimated amount that the producer receives for the sale of the assets at the end of the expected lifetime). That is because a producer must be able to recoup past efficient investments through the tariffs. ACM does, however, take account of actual proceeds of asset sales.
56. If an asset has been financed (in whole or in part) with a subsidy or contributions from third parties, the historical cost is reduced by the amount of that subsidy and/or contributions.
57. ACM does not include assets under construction in determining the RAV. Assets only form part of the RAV if they have been taken into use (capitalized). A producer is permitted to capitalize the construction interest on assets under construction.
58. For the production of electricity, ACM has determined the RAV for the end of 2022 and the depreciation for 2022 in accordance with the amounts stated in Annex 1 to this decision.
59. ACM calculates the reasonable return that a producer may achieve in 2024 by multiplying the RAV by the WACC that ACM has set for 2024.<sup>4</sup> ACM adds the depreciation to this to determine the capital costs.
60. ACM calculates them using a nominal WACC, which already includes inflation. Full allowance is therefore already made for inflation on the RAV by means of the WACC.

### 5.1.2 The operating costs

61. The regulatory costs consist of both capital costs and operating costs. ACM estimates the 2024 operating costs on the basis of the operating costs in the adopted 2022 financial statements. On the basis of the allocation keys supplied by the producer, ACM allocates the operating costs to the various activities: production and distribution of drinking water and electricity. ACM describes below which operating costs have been allocated (fully or partly) to the production of electricity and the choices ACM has made with regard to a number of specific items. ACM also deals with the cost base for profit-sharing.
62. ACM does not consider all the operating costs recognized in the 2022 financial statements to be representative for the estimate of the 2024 costs. ACM therefore does not include a number of cost

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<sup>4</sup> WACC for energy and drinking water companies in the Caribbean Netherlands for the year 2023-2025, ACM/UIT/585024.

items in the cost base for 2024, or has estimated a different value for these cost items for 2024 than the amount entered in the financial statements in 2022. In this section, ACM describes the items to which this applies and the basis on which it has adjusted these items. ACM also states in this section how it deals with other revenues.

*Costs and other items that do not form part of the operating cost base*

63. ACM first excludes a number of costs and other items because they are already reimbursed in another way. Profit and loss, dividend, interest expenses for loan capital and the transaction costs for financing are part of the capital costs and are reimbursed through the WACC. ACM therefore does not include these cost items in the operating costs. Depreciation is already included through the reimbursement of capital costs and is similarly not part of the operating costs. Finally, ACM also excludes the costs for purchases of fuel and electricity (for the production of drinking water) from the operating costs, because these costs are reimbursed separately (see section 5.1.4).

*Provisions*

64. In the case of changes in provisions, ACM determines for each type of provision how it will include these in determining the cost base. That is because changes in provisions cannot be treated immediately as costs: it is also possible that a provision is recognized but proves to be unnecessary. A release of a provision is therefore not necessarily income that ACM will include in determining the cost base. On the other hand, an addition to a provision is also not necessarily a cost item in a regulatory sense.
65. For ContourGlobal, ACM has not exercised any irregular options its treatment of provisions in relation to the statement in 2022 financial statements.

*Corrections to costs and revenues*

66. From 2020, ACM will no longer apply corrections to incidental costs and revenues. In marginal 72 ff. of the method decision for the 2020-2025 regulatory period, ACM explains why it has introduced this change. However, ACM will continue to evaluate the stated costs and other revenues and it may correct them before the cost base is used for carrying out profit-sharing or setting the cost base for calculating the tariffs.
67. For ContourGlobal, ACM has not applied any corrections to the costs and revenues that were reported for 2022.

*Other costs and revenues*

68. ACM also takes account of activities carried out by the producer for which ACM sets no tariff. The costs and revenues of such activities must be kept wholly outside the tariff regulation, because otherwise they might be reimbursed twice.
69. Whenever other revenues result from activities that are regulated and the costs of which are included in the cost base, ACM deducts these revenues from the cost base. This method creates an operational cost 'net amount', which gives a clear picture of the amount that has to be earned through the regulated tariffs in order to cover the costs of the activity in question.

*Inflation*

70. In order to estimate the operating costs for 2024, 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 <island> between the third quarter of year  $t-1$  and the third quarter of year  $t-2$ . The values for the consumer price index are included in the calculation model in Annex 2.
71. In the period 2020-2022, the ACM has worked with a derived CPI to take into account the (pressure) effects of the *emergency measure to temporarily reduce energy, telecom and drinking water rates*.<sup>5</sup> In

<sup>5</sup> This concerns the subsidies awarded by the Ministry of Economic Affairs and Climate Policy tot the utilities to reduce the standing charge to USD 0/month for all electricity and drinking water connections.

connection with the consistency in the calculation of the CPI across the tariff decisions, ACM takes this derived CPI series into account, in line with the choices made in this regard in previous decisions. To estimate inflation in 2024, the ACM again uses the original CPI series from Statistics Netherlands (CBS).

### 5.1.3 Splitting fixed and variable costs

72. As mentioned in the introduction to this chapter and in marginals 82 to 86 of this method decision, ACM divides the total costs into a fixed and variable component. This enables ACM to take better account of any expected rises in costs that are related to the increase in the produced volume.
73. Capital costs and operational costs may be split into a fixed and a variable component. With regard to the capital costs, ACM points out that it recognizes that in practice they are not literally variable; the costs of investments in certain assets do not decrease if, as a result of lower future volumes, the assets in question are used to a lesser degree. ACM will take this into account in the event of any substantial decrease in volumes. This is not currently the case. In cases where volumes increase, ACM is of the opinion that applying 'variable capital costs' could be a useful way of estimating, as is the case with operational costs, the amount by which the costs increase when the volume increases.

#### *Determining the proportions of variable costs*

74. When determining the tariff decisions for the year 2020, ACM decided to separate fixed and variable costs for the first time. In preparation of these decisions, ACM asked every company to make an estimate of where this separation should be. ACM has held extensive discussions on this matter with the various companies. On the basis of the proposals received and all the available data, ACM has devised a calculation method for determining the proportion of variable costs. This calculation method has been applied consistently for each company. The result, for 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.<sup>6</sup>
75. In consultation with ContourGlobal, ACM has established that the percentages of variable costs used in relation to tariff decisions for the year 2023 and before can also be used for the tariff decisions for the year 2024.
76. On the basis of this method, ACM has arrived at the following variable cost percentages:
- ACM regards 0% of the total capital costs for the production of electricity as variable.
  - ACM regards 11,0% of the total operational costs for the production of electricity as variable.

#### *Applying the proportions of variable costs*

77. ACM has introduced three different cost bases in the introduction to section 5.1 of this decision. When determining two of these costs bases, ACM applies the splitting of fixed and variable costs. ACM explains this as follows.
78. First, ACM uses the split when determining the cost base for estimating the costs in 2024. The estimate of the costs in 2024 is based mainly on the actual costs in 2022. If an increase in volume is expected between 2022 and 2024, a corresponding increase in the related costs is inevitable.<sup>7</sup> The degree to which the costs are expected to increase in 2024 compared to 2022 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 2022 and 2024, then an increase of 2% of the total costs related to the greater volume can be expected.

<sup>6</sup> Decision of setting the maximum electricity production price as of January 1, 2020 for ContourGlobal Bonaire B.V., reference ACM/UIT/524767.

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

79. By taking any increase in volumes (and therefore the variable costs) into account when estimating the costs in 2024, it is possible to estimate more accurately what level of tariff covers costs in 2024. Although the final effect of volume increases is calculated retrospectively in the volume correction, an accurate estimate can help keep this volume correction as small as possible.
80. Second, ACM uses the splitting of fixed and variable costs for adjusting the estimated costs for 2022. 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 2022. 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 2022 differing from the volumes used when estimating the cost base for 2022. Here, too, ACM adjusts the cost estimate by allowing the variable component of the estimated costs to move in line with the movement of the volume.

#### 5.1.4 Developments for 2024

81. In specifying the revenues used to determine the tariffs, ACM can take account of developments in the costs or activities relative to the cost base. ACM will take account of changes (increase or decrease in revenues relative to costs) in the event of *major occurrences*, as described in marginals 91 to 95 of the method decision.
82. For CGB, the ACM takes into account the investments in a solar park and an additional battery system as a major event in the estimated costs for 2024 – just as in the estimated costs for 2023. CGB has provided adjusted data on the costs of these investments. The ACM calculates the estimated costs for 2024 based on this data. See Annex 2 for the details of this calculation and underlying data.
83. With regard to the financing of these investments, it is also important that a contribution is expected from *Bonaire Brandstof Terminals* (BBT), amounting to 50% of the investment amount. The ACM has taken this contribution into account in the calculation of the estimated costs of CGB for 2023, by only including 50% of the estimated capital costs in the production price for 2023. However, to date, BBT's contribution has not become available. However, the ACM for 2024 again assumes that CGB finances 50% of the assets mentioned. The reason for this is that the ACM has received sufficient comfort from the Ministry of Economic Affairs and Climate that the contribution (50%) from BBT will be realized in 2024.
84. The ACM will correct any missed income by CGB in 2023 and 2024, as a result of an incorrect assumption about the time at which the BBT contribution becomes available, in the tariff years 2025 and 2026. Furthermore, BBT will not charge a lease fee for 2024 for making the assets it finances available to CGB. This means that CGB can use these assets free of charge for the production and storage of electricity. The ACM calculates the cost benefit of this in the production price of CGB for 2024.
85. The ACM also notes that the following major events will occur in the production of electricity by CGB for the year 2024:
- CGB will purchase spare parts and special tools for the battery system in mid-2024. Because this is a significant expense that is not part of the cost base for 2024, the ACM assesses this expense as a major occurrence. Although CGB has presented this expense as operational costs, ACM sees reason, based on international financial reporting rules, to label the expense as an investment expense because the parts to be purchased can be classified as tangible fixed assets (PP&E). The ACM therefore calculates capital costs (depreciation costs and capital costs) for this investment. The ACM equates the depreciation period to the remaining depreciation period for the battery system. The ACM adds the estimated capital costs of this investment for 2024 to the estimated capital costs of the current assets.
  - CGB will make an investment in so-called peak generators (peakers) in May 2024 to meet the rising electricity demand on the island. Because this concerns a large and incidental investment amount and the investment in the peak generators does not meet the assumption of continuous

replacement, the ACM assesses this investment as a major occurrence. The expected capital cost of the peak generators for 2024 is added to the estimated capital cost of the current assets.

- CGB procured a new black-start generator in August 2023, which can also serve as a peaker. With this generator, CGB can not only restore power to the grid in the event of a power outage, but also provide peak power during the low wind season every year. Because the investment in this black-start/peak generator does not meet the assumption of continuous replacement, the ACM assesses this investment as a major event. The ACM adds the expected capital costs of the black-start generator for 2024 to the estimated capital costs of the current assets.
- CGB will expand the 30kV grid from November 2024 to ensure a reliable supply of electricity and possibility for connection future generating capacities to the grid. Because this expansion investment does not meet the assumption of continuous replacement, the ACM assesses this investment as a major event. The ACM adds the estimated capital costs of this expansion for 2024 to the estimated capital costs of the current assets.

### 5.1.5 The calculation of the energy costs

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

87. The data that ACM takes into account in calculating these costs are as follows:

- The estimated fuel efficiency (the number of liters of fuel required to produce one kWh), possibly using a weighted average of different types of fuel;
- The share of the production volume that is produced with fuel relative to the total production including production using solar energy and wind energy;
- The most recent fuel price, possibly for each type of fuel. This is the price per liter that the producer paid for the fuel used in the most recently concluded purchase agreement for that fuel.

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

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

89. In applying the above formula, the producer is permitted to charge the fuel component monthly in 2024. ContourGlobal is required to keep records of what fuel price and what quantities of fuel ContourGlobal has been using per month. When appropriate, ACM may also request the purchase agreements and paid invoices from ContourGlobal. ContourGlobal is required to submit to ACM a monthly statement of the fuel component that it charges on to WEB and a statement of the most recent purchase invoices for LSD fuel.

90. ContourGlobal may have various types of fuel at its disposal in 2024, with different properties and prices. For the specific situation in which ContourGlobal has access to different types of fuel during the year, ACM has expanded the above formula. For this expansion of the formula, ACM refers to what is included in the production price decision for the year 2021.<sup>8</sup>

## 5.2 Determining the allowed revenues

91. The previous section describes how ACM determines the costs. In this section, ACM describes how it determines the allowed revenues. The allowed revenues for 2024 are based on the established costs, with three adjustments:

<sup>8</sup> Decision setting the maximum electricity production price as of January 1, 2021 for ContourGlobal Bonaire B.V., reference: ACM/UIT/546133, marginal number 88.

- The expected variable costs will be adjusted for the expected 2024 volume. Account will be taken of the effects of any major occurrences.
  - The price level of the costs will be adjusted for 2024 by applying a correction for the expected rate of inflation.
  - When determining the revenues for 2024, ACM incorporates the results of several corrections related to previous years.
92. When determining allowed revenues, ACM takes expected volume developments for 2024 into account. The variable costs measured in 2022 can be expressed in a cost level *per unit of volume* by dividing the 2022 variable costs by the volume measured in 2022. Subsequently multiplying this cost level per unit of volume by the expected volume for 2024 results in the expected cost level of variable costs for 2024. By then adding up the 2022 fixed costs, the expected cost level for 2024 is arrived at.
93. When determining the production price for 2024, ACM incorporates the results of the following corrections:
1. Volume correction for 2022
  2. Profit sharing for 2022
  3. Fuel correction for the producer for 2022
94. In the next sections, ACM describes how the corrections mentioned are carried out. In section 5.2.4, ACM describes the other corrections.
95. In line with the change made to this part in the tariff decisions for 2022, ACM will apply the statutory interest rate for the Caribbean Netherlands<sup>9</sup> when the price level of subsequent calculation amounts is brought up to 2024. The amount of the statutory interest for the Caribbean Netherlands at the time of publication of this decision was 3%, and has always been 3% for the relevant past years (on which subsequent calculations are reimbursed).

### 5.2.1 Volume correction

96. ACM based the calculation of the 2022 production price on a certain expected production volume. ACM corrects this volume if it turns out to be higher or lower. After all, the 2022 production price is based on this volume: the fixed costs that ACM had estimated for 2022, divided by the estimated volume, form the fixed costs component of the production price. If the actual volume is higher than estimated, the producer has received excessive coverage for fixed costs through the production price. And if the actual volume turns out lower than estimated, the producer has received insufficient coverage for the fixed costs. The expectation is that the variable costs automatically change in line with the difference between estimated and actual volume, and no correction for this is needed. In the volume correction, ACM takes into account the splitting of the costs into fixed costs and a variable component, as described in section 5.1.3 of this decision.
97. ACM calculates the volume correction amount by multiplying the fixed part of the production price by the difference between the estimated and the actual volume. In the event of a higher actual volume, the correction amount is negative. This means that the producer has received too much and repays this amount (in the form of a discount) through the 2024 production price to the end-users.
98. The calculation and the result of the calculation are included in Annex 2 to this decision.

### 5.2.2 Profit sharing

99. Section 5.1 describes how ACM determines the estimated 2022 cost base and the actual 2022 cost base. As laid down in the method, ACM applies the profit-sharing methodology to encourage companies to make their operations efficient. By looking back at the estimated costs in 2022 (after the correction for the actual volume) and the actual costs in 2022, it is possible to see whether the

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<sup>9</sup> Regulation of the Minister of Security and Justice of 9 November 2011, no. 5715475/11/6 fixing statutory interest for the public entities Bonaire, Sint Eustatius and Saba, Government Gazette no. 20639.

producer has incurred more or lower costs than previously estimated. Any difference is apportioned equally (50%) between the producer and the end-user.

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

### 5.2.3 Fuel correction

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

102. The electricity producers have already absorbed part of the fluctuations in the fuel price through the monthly adjustment of production prices. There are three further matters to correct:

- Time lag of several months between the prices of fuel and their passing on in the production price;
- The difference between the estimated fuel efficiency and the actual fuel efficiency;
- The actual share of production produced with fuel versus the share produced with sustainable sources.

103. In the 2022 production price decision, ACM has recorded the estimated fuel efficiency. Now that the actual fuel efficiency for 2022 can be determined, ACM is calculating the difference in costs that has resulted. If more than one type of fuel has been used, this is taken into account by ACM by calculating a weighted average fuel efficiency.

104. In the 2022 production price decision, ACM has recorded the share of production that is expected to be generated with fuel. Now that the actual product mix for 2022 can be determined, ACM is calculating the difference in costs that has resulted.

105. Technically, ACM calculates this as follows by going through the following steps each month:

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

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

107. The difference between these costs and the revenues is the amount that ACM includes in the recalculation in the 2024 production price. If the costs were lower than the revenues, the producer received more than the revenues required to cover the fuel costs. The producer must then refund this difference to the distributor in 2024 in the form of a discount on the production price. If the costs were higher than the revenues, the producer received less than the revenues required to cover the fuel costs. This difference is then refunded to the producer in 2024 by means of a markup on the production price.

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

### 5.2.4 Other corrections

109. When calculating the production price for ContourGlobal for 2022, ACM has applied a number of one-off corrections.<sup>10</sup> These corrections (lettered a to f in the production price decision for 2022) arose from the amended determination of the WACC for the years 2017-2019, based on a ruling by the Joint

<sup>10</sup> Decision setting the maximum electricity production price as of January 1, 2022 for ContourGlobal Bonaire B.V., reference: ACM/UIT/567796, marginal number 107.



Court of Justice of Aruba, Curaçao and Sint Maarten and Bonaire, Sint Eustatius and Saba on October 21, 2020.<sup>11</sup> The ACM announced in the production price decision for 2022 that it will carry out a subsequent calculation for the total of the material effects resulting from these corrections, if the realized volume of CGB for 2022 deviates from the estimated volume.<sup>12</sup> A higher volume than estimated means that the surcharge in the production price for 2022 to cover these corrections will be charged to WEB more often. As a result, the final amount of the compensation may exceed the original correction amount to be reimbursed. Conversely, a lower than estimated volume means that the final amount of the compensation has remained below the correction amount to be reimbursed.

110. The ACM notes that the realized volume of CGB for 2022 is higher than the estimated volume. This means that CGB has received a higher compensation than the original correction amount to be reimbursed. The ACM will deduct the difference, including application of the statutory interest, from ContourGlobal's total income for 2024, as included in Annex 2 to this decision.

### 5.3 Setting the maximum production price

111. The previous section states the permitted 2024 revenues for the production of electricity. In this section, ACM sets the maximum production price per kWh that ContourGlobal may charge distributor WEB in 2024.
112. The estimated production for 2024 is required in order to set the production price. ACM accepts the estimate by ContourGlobal. As described in section 5.1.3, ACM also uses this estimated volume for determining the allowed revenues, so it is therefore important that the production price is arrived at by dividing the allowed revenues by this same level of expected production volume.
113. This calculation and the result of this calculation are included in Annex 1 and Annex 2 to this decision.

### 5.4 Retrospective determination of differences

114. In section 5.2 of the method decision, ACM explains how it deals with differences between the determined allowed revenues and the actual costs incurred.
115. In the operation of the chosen profit-sharing methodology, the allowed revenues for a particular year are determined in advance and the difference between those revenues and the costs incurred by the producer in that year is then determined retrospectively. ACM sets part of that difference, namely 50%, against the revenues for the next calendar year. The remainder is for the account of the company, and is a profit or loss (depending on the aforementioned difference).
116. This retrospective examination will be carried out for 2024 with reference to the 2026 tariff proposal, when the actual costs of ContourGlobal for 2024 are revealed by the independent audit of the 2024 financial statements.
117. ACM has stated in the method that this retrospective examination includes a correction for differences in volume and for changes resulting from energy costs. Specifically for the production of electricity by ContourGlobal, this concerns the estimate for the production volumes, as stated in Annex 2.
118. If these volumes turn out higher or lower, ACM will apply a correction before examining whether ContourGlobal incurred higher or lower costs than previously estimated. These differences are due to be determined in 2025 and ACM will incorporate any differences in the production price decision for 2026.

<sup>11</sup> Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba October 21, 2020, ECLI:NL:OGHACMB:2020:197.

<sup>12</sup> Decision setting the maximum electricity production price as of January 1, 2022 for ContourGlobal Bonaire B.V., reference: ACM/UIT/567796, marginal number 111.

## 6 Provisions

119. On the basis of Section 2.5, paragraph 1, of the BES Electricity and Drinking Water Act, ACM determines the maximum production price of electricity that ContourGlobal Bonaire B.V. will charge to the distributor as of January 1st, 2024 for the electricity produced.
120. ACM sets this production price at 0,14101 USD kWh excluding the fuel component.
121. ACM determines the fuel component in USD/kWh as follows:
- $$\text{Fuel component}_{\text{month } t} = \text{estimated fuel efficiency} \times \text{estimated share}_{\text{production with fuel}} \times \text{fuel price}_{\text{most recent}}$$
- where the value that applies to the above parameters is determined in accordance with Annex 1 to this decision. Where multiple types of fuel are involved, the formula should be extended by performing the same calculation for each type of fuel, and then adding the individual components together in proportion to their share in the fuel mix to arrive at the composite fuel component for month t.
122. This decision and its annexes will be announced in the Government Gazette. ACM will also publish this decision on its website ([www.acm.nl](http://www.acm.nl)).
123. This decision comes into force on January 1st, 2024.

The Hague,  
Date: 8th December 2023

Netherlands Authority for Consumers and Markets,  
on its behalf,

mr. dr. M. Aelen  
Team Manager Energy Department

## Filing a judicial or administrative appeal against this decision

### ***Judicial appeal***

Natural persons and legal persons whose interests have been directly affected by this decision may file a judicial appeal no later than six weeks after this decision was sent or issued. Stakeholders established on Saba or Sint Eustatius must submit their appeal in duplicate to the Registry of the Court on Sint Maarten. The address of the Registry is: Frontstreet 58 (The Courthouse), Philipsburg, Sint Maarten. Stakeholders established on Bonaire must submit their appeal in duplicate to the Registry of the Court on Bonaire. The address of the Registry is: 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](mailto:procedurescn@acm.nl). ACM will send confirmation of receipt. If the submitter of the appeal receives no confirmation of receipt from ACM, ACM urges the submitter to contact ACM by telephone on: +31 (0)70 722 23 13

## Annex 1: Overview of amounts

In this annex, ACM presents an overview of the amounts referred to in chapter 5 of this decision. ACM has included the detailed calculation in the calculation model (Annex 2).

### Key figures production price decision - Electricity CG Bonaire 2024

Please note that all numbers are displayed in Dutch decimal system

#### General parameters

WACC 2022	%	6,08%
WACC 2024	%	6,46%
Estimated inflation 2021 for Bonaire	%	-1,80%
Estimated inflation 2022 for Bonaire	%	4,30%
Estimated inflation 2023 for Bonaire	%	8,80%
Estimated inflation 2024 for Bonaire	%	1,90%
Legal fixed interest rate (2020 - 2024)	%	3,00%
Profit sharing percentage	%	50,00%

#### Summary of cost data 2022 / 2024

Estimation of RAV average/ultimo 2024 (existing assets)	USD	36.960.881
Estimated depreciation in 2024 (existing assets)	USD	4.368.244
Regular OPEX realized in 2022	USD, price level 2022	7.711.230

#### Total expected costs for 2024 (for setting income level)

Total OPEX estimation regular	USD, price level 2024	8.409.554
OPEX estimation additional (BESS + PV)	USD, price level 2024	597.630
CAPEX realised in 2024 for BESS and PV-plant	USD, price level 2024	confidential
Additional RAV (BESS+PV) averaged over active months in 2024	USD	8.739.241
Additional depreciation (BESS+PV) in 2024	USD	477.210
CAPEX realised in 2023/2024 for part 5 of RAB	USD, price level 2024	confidential
Additional RAV (part 5) averaged over active months in 2024	USD	1.996.693
Additional depreciation (part 5) in 2024	USD	359.424
Total capital costs estimation	USD, price level 2024	8.286.091
Total expected costs 2024 (= income level 2024 before corrections)	USD, price level 2024	17.293.276

#### (Regular) Corrections reimbursed in production price 2024

Volume effect over 2022 (excl. fuel)	USD, price level 2022	-481.098
Profit sharing effect over 2022	USD, price level 2022	298.003
Fuel price and volume effect over 2022	USD, price level 2022	3.711.001

#### One-time corrections in production price 2024

Recalculation of material effect corrections a to f in production price 2022	USD, price level 2022	-172.313
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#### Parameters on production

Expected production by wind in 2024	kWh	36.200.000
Expected production by solar in 2024	kWh	8.943.787
Expected production by fuel in 2024	kWh	102.738.899
Total net production in 2024	kWh	147.882.686
Estimated LSD fuel yield for 2024	liter / kWh	0,2737
Estimated share of fuel production in total net production for 2024	%	30,53%
LSD Price used for fuel component January 2024	USD / liter	1,0393
Fuel component in production price (January 2024)	USD, price level 2024 / kWh	0,19759
Production price electricity January 2024 incl. fuel	USD, price level 2024 / kWh	0,33860

#### Relevant parameters on variable costs

Costs considered as variable in the costs estimation for 2024	USD, price level 2024	925.051
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## Annex 2: Calculation of tariffs

ACM has published on its website ([www.acm.nl](http://www.acm.nl)) the 'CGB production price calculation 2024' Excel file, containing the calculation model including the calculation of the maximum production price for ContourGlobal. This file has been published as an annex to this decision, forms an integral part of it and can be found on the publication page of this decision at [www.acm.nl](http://www.acm.nl).