



## Decision

Our reference : ACM/UIT/611023  
Subject : ACM/23/181661  
Date : 8th December 2023

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

#### Saba Electric Company N.V.

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

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

## 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 distribution tariff decision	5
3.2	The distribution tariff decision	6
3.2.1	The connection tariff	6
3.2.2	The fixed use tariff	7
3.2.3	The variable use tariff	7
3.2.4	Reconnection tariff (flat-rate amount for reconnection)	8
3.3	The process of setting the new distribution tariffs	8
<b>4</b>	<b>Legal protection</b>	<b>9</b>
4.1	What does this mean?	9
4.2	Direct judicial appeal...	9
4.3	... or first an administrative appeal filed with ACM	10
<b>5</b>	<b>Setting the distribution tariffs</b>	<b>11</b>
5.1	Determining the fixed and variable costs for each activity	11
5.1.1	The capital costs	12
5.1.2	The operating costs	12
5.1.3	Splitting fixed and variable costs	14
5.1.4	Developments in 2024	15
5.2	Setting the allowed revenues	15
5.2.1	Volume correction	16
5.2.2	Profit sharing	16
5.3	Setting the maximum distribution tariffs	17
5.3.1	The connection tariff	17
5.3.2	The fixed use tariff	17
5.3.3	The variable use tariff	17
5.3.4	The reconnection tariff	18
5.4	Retrospective setting of differences	18
<b>6</b>	<b>Provisions</b>	<b>19</b>
	<b>Annex 1: Overview of amounts</b>	<b>21</b>
	<b>Annex 2: Overview of tariffs</b>	<b>22</b>
	<b>Annex 3: Calculation of tariffs</b>	<b>23</b>

## 1 Introduction and reader's guide

1. Through this distribution tariff decision, the Netherlands Authority for Consumers and Markets (hereinafter: ACM) is implementing Section 3.9, paragraph 4, and Section 3.14, paragraph 1, of the BES Electricity and Drinking Water Act.<sup>1</sup> These provisions require ACM to set a reconnection tariff and, at the proposal of a distributor, to set the maximum distribution tariffs that this distributor will charge end-users for the distribution of electricity (hereinafter referred to collectively as the distribution tariffs).
2. Saba Electric Company N.V. (hereinafter: SEC) is the distributor of electricity on Saba.
3. In this decision, ACM sets the maximum distribution tariffs that SEC will charge from January 1st, 2024 for the distribution of electricity. Where ACM uses the words 'maximum tariffs' or 'maximum tariff' in this decision, it refers to the maximum tariffs or tariff that SEC is permitted to charge.
4. In the case of electricity distribution, it concerns four types of tariff:
  - a. the connection tariff;
  - b. the fixed use tariff;
  - c. the variable use tariff;
  - d. the reconnection tariff;
5. This decision consists of a number of chapters. Chapter 2 provides the context of this decision. Chapter 3 sets out the connection with other decisions. Chapter 4 is devoted to legal protection. Chapter 5 sets out the costs, revenues, and maximum distribution tariffs of SEC. This chapter also states how ACM will deal with any differences between allowed revenues and costs ultimately incurred. This decision also contains three annexes, namely an overview of the main calculated amounts (Annex 1), the set tariffs (Annex 2) and the 'Calculation of SEC tariffs 2024' Excel file (Annex 3). Annex 3 is published exclusively on the ACM website ([www.acm.nl](http://www.acm.nl)) and forms an integral part of the decision.
6. 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

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

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

### 3 Connection with other decisions

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

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

20. ACM's power to adopt a production price decision and a distribution tariff decision results from Section 2.5, paragraph 1, and Section 3.14, paragraph 1, of the BES Electricity and Drinking Water Act.
21. In order to set a production price and a distribution tariff, ACM must apply a method that describes how the costs of a business lead to a tariff for the consumer. The legal basis of this method results from Section 2.5, paragraph 4, and Section 3.13, paragraph 5, of the BES Electricity and Drinking Water Act:

##### *“Section 2.5*

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

##### *Section 3.14*

- 1. On a proposal from a distributor, the Netherlands Authority for Consumers and Markets sets the maximum tariffs that the distributor will charge end-users for the distribution of electricity or drinking water.*
- 2. There are four distinct tariffs:*
  - a. connection tariff;*
  - b. fixed use tariff;*
  - c. variable use tariff;*
  - d. road transportation tariff for drinking water.*
- 3. The tariffs may differ for different categories of end-user.*
- 4. The tariffs are non-discriminatory, transparent and based on the actual costs, allowing for a reasonable return and taking into account the subsidy referred to in Section 5.1.*
- 5. In setting the tariffs, the Netherlands Authority for Consumers and Markets applies a method that promotes efficient business practice.*
- 6. The tariffs come into force on a date to be specified by the Netherlands Authority for Consumers and Markets and apply until January 1st of the year following the date of entry into force of the decision setting the tariffs, with the exception of the variable use tariff, which may be set on January 1st and July 1st of each calendar year.*
- 7. If on January 1st the tariffs for that year have not yet been set, the most recently set tariffs will remain in force up to the date of entry into force of the decision setting the tariffs for the following year.*

8. *By ministerial decree, more specific rules are set with regard to the procedure and elements and the method used to calculate the tariffs, as referred to in this section.*"

22. The decree referred to in the above sections is the Ministerial Decree on Electricity and Drinking Water in the BES Islands.<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."*

23. After consultation with stakeholders, comprising the various producers, distributors and end-user organizations in the Caribbean Netherlands, ACM adopted the "Method for setting the tariffs for the production and distribution of electricity and drinking water in the Caribbean Netherlands 2020-2025" (hereinafter: the method) on September 25th, 2019. On 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.
24. The aforementioned method applies for a period of six calendar years, from January 1st, 2021 to December 31st, 2025.
25. The BES Electricity and Drinking Water Act and the Ministerial Decree form the basis of the method. The method forms in turn the basis of the production price decision and the distribution tariff decision.

## 3.2 The distribution tariff decision

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

### 3.2.1 The connection tariff

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

*"Section 3.15*

*1. The connection tariff takes into account the costs associated with the task referred to in Section 3.5, paragraph 1, preamble and part c.*

*2. The connection tariff is charged on a one-off basis to every party connected to a network by a distributor.*

*3. The level of the connection tariff depends on the size of the connection capacity and, if the length of the connection exceeds 25 meters, the length of the connection, and is expressed as a fixed amount in*

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

USD.

4. *If, on an end-user's connection with a length in excess of 25 meters, a new connection is installed for a different end-user, the end-user who has paid for the existing connection will receive partial compensation from a distributor."*

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

### 3.2.2 The fixed use tariff

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

*"Section 3.16*

*1. The fixed use tariff takes into account the costs associated with the tasks referred to in Section 3.5, paragraph 1, preamble and sections a, b, d, and e.*

*2. The fixed use tariff is charged to each end-user who receives electricity or drinking water on a connection and to each end-user who feeds electricity into the network.*

*3. The level of the fixed use tariff depends on the size of the connection capacity, is calculated per connection and is expressed as a fixed amount in USD.*

*4. A lower fixed use tariff may be set for certain categories of end-user. By ministerial decree, it is possible to specify that end-users with a low connection capacity are given a discount on the fixed use tariff, with the discount rate being specified in the decree.*

*5. Costs associated with deliberate destruction by an end-user are charged individually to that end-user."*

30. The fixed use tariff is a fixed amount that an end-user pays periodically (monthly) to the distributor. This amount covers the costs that the distributor incurs for the transportation and supply of electricity or drinking water (also referred to as distribution or network costs).
31. The level of the fixed use tariff may differ for different connection capacities. End-users with a small connection capacity pay a lower fixed use tariff than end-users with a large connection capacity. This is due to the costs that the distributor incurs. The larger the connection, the higher the distribution/network costs.

### 3.2.3 The variable use tariff

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

*"Section 3.17*

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

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

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

33. The variable use tariff is the amount that end-users pay to the distributor per purchased kilowatt-hour of electricity or per cubic meter of drinking water. The variable use tariff covers the costs of the production

of electricity and the part of the distribution/network costs not already taken into account in the fixed use tariff.

### 3.2.4 Reconnection tariff (flat-rate amount for reconnection)

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

*“Section 3.9*

*1. (...)*

*2. (...)*

*3. (...)*

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

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

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

*“Section 3.2*

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

### 3.3 The process of setting the new distribution tariffs

36. On the basis of Article 2.1, paragraph 5, of the Ministerial Decree on Electricity and Drinking Water in the BES Islands, a distributor intending to amend distribution tariffs must submit any proposal to that effect to ACM three months before the intended date on which such an amendment is due to be implemented.
37. The distribution tariff proposal by SEC referred to in the Ministerial Decree came into existence in the period from July to November 2023.

## 4 Legal protection

38. 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.
39. 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.
40. Pursuant to Section 3, paragraph 2, of the Bonaire, Sint Eustatius and Saba Public Entities Implementation Act, in the cases referred to in paragraph 1, the BES Administrative Justice Act (*Wet administratieve rechtspraak BES*) applies insofar as decisions within the meaning of that Act are concerned.
41. 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.
42. 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).
43. 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.
44. 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?

45. 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.
46. 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.
47. 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...

48. 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.
49. 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),

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Philipsburg, Sint Maarten.

50. 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

51. Stakeholders may also choose to submit an administrative appeal to ACM first.
52. 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.
53. 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 distribution tariffs

54. As stated in section 5.2 of the regulation method of September 25th, 2019, ACM takes a number of steps in setting the distribution tariffs:
- 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.
55. ACM describes the above four steps in this chapter. In Annex 1 to this decision, ACM provides an overview of the amounts calculated in this chapter. Annex 2 shows the set tariffs. The calculation model (Annex 3) shows the calculations made by ACM in order to calculate the maximum distribution price.
56. The profit-sharing methodology referred to in the method decision will be applied by ACM for the 2024 distribution prices. In this methodology, ACM looks back at 2022 to determine the difference between the estimated costs for 2022 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 3).

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

57. A distributor's costs consist of capital costs and operating costs – sometimes referred to as the regulatory costs. Capital costs comprise depreciation and a reasonable return (WACC) on the invested capital. Operating costs are costs incurred by a company to keep the business operating, such as personnel costs. ACM bases its cost determination for the setting of the distribution tariffs in 2024 on the 2022 costs, as recorded in the financial statements, supplemented with additional information on the operating costs and assets that the distributor has sent to ACM.
58. In order to apply profit-sharing, ACM uses the estimated cost base drawn up for the setting of the 2022 distribution tariffs. ACM can apply this cost base retrospectively if it appears to be based on incorrect or incomplete data.
59. 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.
60. 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.
61. 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.
62. 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

63. 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 (RAV).
64. The RAV consists of the fixed assets that the distributor uses to distribute electricity and which it requires for its business operations. The RAV is therefore made up of the value of the assets that can be allocated directly or indirectly to the distribution of electricity.
65. The depreciation of the RAV and a reasonable return on the RAV make up the capital costs. In principle, ACM uses the RAV set for the 2022 distribution tariffs, plus the investments that the distributor capitalized in 2022. This results in an RAV for ACM on December 31st, 2022 (2022 year-end).
66. ACM sets the annual depreciation by applying the depreciation periods used by the distributor. ACM chooses not to take account of any residual value (the estimated amount that the distributor receives for the sale of the assets at the end of the expected lifetime). That is because a distributor must be able to recoup past efficient investments through the tariffs. ACM does, however, take account of actual proceeds of asset sales.
67. 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.
68. ACM does not include assets under construction in determining the RAV. Assets only form part of the RAV if they have been taken into use (capitalized). A distributor is permitted to capitalize the construction interest on assets under construction.
69. For the distribution of electricity, ACM has set the RAV for the end of 2022 and the depreciation for 2022 in accordance with the amounts stated in Annex 1 to this decision.
70. ACM calculates the reasonable return that a distributor 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.
71. 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

72. 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 distributor, ACM allocates the operating costs to the various activities: production and distribution of electricity. ACM describes below which operating costs have been allocated (fully or partly) to the distribution 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.
73. 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 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.

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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.

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

74. ACM first excludes a number of costs and other items because they are already reimbursed in another way. Profit and loss, dividend, interest expenses for loan capital and the transaction costs for financing are part of the capital costs and are reimbursed through the WACC. ACM therefore does not include these cost items in the operating cost base. Depreciation is already included through the reimbursement of capital costs and is similarly not part of the operating costs.

*Provisions*

75. 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.
76. SEC recognized the following provisions in the 2022 financial statements that relate partly to the distribution of electricity:
- Provision for anniversary payments for SEC employees.
77. For SEC, ACM has not exercised any irregular options in its treatment of provisions in relation to the statement in the 2022 financial statements.

*Corrections to costs and revenues*

78. 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.
79. For SEC, ACM has not applied any corrections to the costs and revenues that were reported for 2022.

*Other costs and revenues*

80. ACM also takes account of activities carried out by the distributor for which ACM sets no tariff. These other activities must be kept wholly outside the tariff regulation, because otherwise they might be reimbursed twice. In the case of SEC, this applies with lease revenues and fines imposed on customers for non-payment of invoices.
81. 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.
82. Finally, ACM takes account of the costs and revenues that the distributor had in 2022 as a result of reconnections and fees for new connections. In setting the cost base, ACM includes only those costs that are reimbursed through the distribution tariff. The distributor can charge separate fees for reconnections and new connections. ACM deducts these amounts from the total cost level used to determine the revenues in 2024.

*Inflation*

83. 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 (CBS) for these figures. For the inflation correction in year  $t$ , ACM uses the percentage difference in the consumer price index (CPI) for Saba between the third quarter of year  $t-1$  and the third quarter of year  $t-2$ . The values for the consumer price index are included in the calculation model in Annex 3.

84. In the period 2020-2022, the ACM 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 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 CBS.

### 5.1.3 Splitting fixed and variable costs

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

87. 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>
88. In consultation with SEC, ACM has established that percentages of variable costs used for tariff decisions for the year 2022 can also be used for the tariff decisions for the year 2024.
89. On the basis of the analysis and assumptions presented above, ACM has arrived at the following variable cost percentages:
- ACM regards 50% of the total capital costs for the distribution of electricity as variable.
  - ACM regards 25% of the total operational costs for the distribution of electricity as variable.

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

90. 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.
91. 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

<sup>5</sup> This concerns the subsidies granted by the Ministry of EZK and I&W to the utility companies to reduce the standing charges to USD 0/month for all electricity and drinking water connections.

<sup>6</sup> Decision setting the maximum electricity distribution tariffs with effect from January 1st, 2020 for Saba Electric Company N.V., reference ACM/UIT/524811.

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

volume can be expected.

92. 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.
93. 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 in 2024

94. 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.
95. ACM has established that there are no major occurrences in the distribution of electricity by SEC for the year 2024.

## 5.2 Setting the allowed revenues

96. 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:
- 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.
97. 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.
98. When determining the revenues for 2024, ACM incorporates the results of the following corrections:
1. Volume correction for 2022
  2. Profit sharing for 2022
99. In the next sections, ACM describes how the corrections mentioned are carried out. In addition to this, there is a correction to the distributor's electricity purchase costs resulting from the monthly change to the fuel component. This correction is explained in marginal 125 of this decision.
100. It is important when applying these corrections that there are always two tariffs in which a correction may be expressed: the fixed use tariff (a fixed amount per month, possibly depending on the connection capacity) and the variable use tariff (an amount for each kWh or m3 consumed). For each correction, ACM will state to which of these tariffs the correction applies.

101. 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>8</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

102. ACM based the calculation of the 2022 use tariffs on a certain expected distribution volume. ACM corrects this volume if it turns out to be higher or lower. After all, the 2022 use tariffs are based on this volume: the fixed costs that ACM had estimated for 2022, divided by the estimated volume, form the fixed component of the distribution tariffs. If the actual volume is higher than estimated, then the distributor has received excessive coverage for the fixed costs through the distribution tariffs. And if the actual volume turns out lower than estimated, the distributor has received insufficient coverage for the fixed costs. The expectation is that the variable costs automatically change in line with the difference between estimated and actual volume, and no correction for this is needed. In the volume correction, ACM takes into account the splitting of the costs into a fixed and a variable component, as described in section 5.1.3 of this decision.
103. ACM calculates the volume correction amount by<sup>9</sup> multiplying the fixed part of the use tariffs 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 distributor has received too much and repays this amount (in the form of a discount) through the fixed use tariff for 2024 to the end-users.
104. When performing the volume correction, ACM takes into account any loss income from subsidy in the event of a negative correction. With a higher realized volume, the ACM assumes that the coverage of fixed costs will increase, but that coverage may actually be lower if part of the tariff is subsidized and this subsidy does not grow along with increasing volumes. In this situation, the volume adjustment would decrease revenues that the distributor has in reality only been able to partially achieve. ACM prevents this by calculating what subsidy income the distributor has lost due to the higher volume achieved and deducting this amount from the negative volume correction.
105. For the 2024 rates, the ACM takes into account lost subsidy income in 2022 as a result of the regular subsidy on the fixed rate, special subsidy received from The Ministry of EZK and subsidy received from Public Entity Saba.
106. The calculation and the result of the calculation are included in Annex 1 and Annex 3 to this decision.

### 5.2.2 Profit sharing

107. 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 distributor has incurred more or lower costs than previously estimated. Any difference is apportioned equally (50%) between the distributor and the end-user. The difference is expressed in the fixed use tariff, to the extent that it pertains to the distribution costs.
108. From 2022, ACM will be applying profit sharing to the costs of network losses. ACM will offset half the difference between the estimated and the actual network loss costs in the variable use tariff.
109. The numerical implementation of this methodology is included in Annex 1 and Annex 4 to this decision.

<sup>8</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.

<sup>9</sup> The fixed use tariffs and the variable use tariff are jointly designated as distribution tariffs in the BES Electricity and Drinking Water Act. There is no difference in meaning between distribution tariffs and use tariffs.

### 5.3 Setting the maximum distribution tariffs

110. The previous section states the allowed 2024 revenues for the distribution of electricity. In this section, ACM sets the maximum distribution tariffs that SEC is permitted to charge end-users.

111. ACM describes how it determines this for each type of tariff.

#### 5.3.1 The connection tariff

112. With effect from January 1st, 2020, ACM set the connection tariff for connections with a 3.2 kVA (kilovolt-ampere) capacity and with a 7.7 kVA capacity.

113. If excavation work is required to bury the cable, the applicable rate that SEC may charge is that set by ACM with effect from January 1st, 2020.

114. ACM currently sees no reason to amend these tariffs, other than for inflation. The set connection tariffs and the tariff for excavation works are included in Annex 2 to this decision.

115. ACM does not yet set a tariff per meter for standard connections located further than 25 meters from the network. ACM cannot currently set this tariff accurately due to a lack of reliable data. For the extended length tariff per additional meter above 25 meters, SEC will issue a cost-based quotation to the end-user concerned and charge the end-user the costs of the extended length.

116. For connections not covered by the aforementioned connections with a capacity of 3.2 kVA and 7.7 kVA, applying the average costs that serve as the basis for a standard tariff does not provide a reliable estimate of the costs. For these connections, SEC will issue a quotation to the relevant end-user based on costs, and charge the costs that result from this to the end-user.

#### 5.3.2 The fixed use tariff

117. The law provides that the level of the fixed use tariff may differ for different connection capacities. ACM has therefore asked the distributor to provide details of the different connection capacities that it uses for electricity.

118. The fixed use tariff that an end-user pays depends on the capacity of his connection. This capacity is expressed in a level of kVA. ACM sets a tariff for each kVA category.

119. The total capacity (in kVA) of all end-users combined serves as a calculation value for the purpose of apportioning the total allowed revenues among the different capacities. For the year 2024, ACM is estimating the total capacity based on a forecast of the numbers of end-users for each category. The division of the total allowed revenues by this estimated total capacity produces a revenue amount per kVA. The total allowed revenues are first corrected according to the correction amounts that apply to this task for 2024, and then divided by this estimated total capacity. This produces a revenue amount per kVA.

120. The fixed use rate set by ACM for the different connection capacities results from the multiplication of the revenue amount per kVA by the capacity of the connection. For this purpose, fixed categories are used (3.2 kVA, 7.7 kVA, 11.0 kVA, etc.), on the basis of the connection capacities that the distributor offers to end-users.

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

#### 5.3.3 The variable use tariff

122. The variable use tariff, i.e. what an end-user pays for the electricity he consumes, results from the setting of the electricity production price set by ACM for 2024.

123. In order to set the variable use tariff, ACM uses the most recent fuel price and the established parameter values for fuel efficiency and product mix that result from the production price decision adopted by ACM. The most recent fuel price is included in Annex 2 of the relevant production price decision.
124. ACM applies any corrections to the established production price, insofar as these follow from the descriptions in section 5.2. These correction amounts are expressed in an amount per unit (kWh) by dividing it by the expected total distribution volume in 2024.
125. After adding the corrections, ACM will include a surcharge for grid losses. The transportation of electricity to an end-user entails a loss of part of that electricity (due to resistance, defective cables, etc.). This affects all end-users.
126. Under Section 3.14, paragraph 6, a distributor may only charge the end-user an amended variable use tariff twice a year, whereas the distributor is required to pay the producer any amended production price on a monthly basis. This can lead to differences between the coverage of the fuel costs in the variable use tariff and the actual fuel costs incurred by the distributor (the monthly fuel component in the production price). In the variable use tariff that applies from January 2024 to June 2025, ACM will offset any differences for the period from May 2022 to October 2023.
127. The set variable use tariff is included in Annex 2 to this decision.
128. Under Section 3.14, paragraph 6, of the Act, ACM is amending the variable use tariff with effect from July 1st, 2024 if the development of the fuel price gives cause to do so.

#### **5.3.4 The reconnection tariff**

129. On July 1st, 2020, ACM set the reconnection tariff at USD 25. This tariff has remained unchanged. ACM sees no reason to amend this tariff from January 1st, 2024 and is maintaining the reconnection tariff at USD 25.

#### **5.4 Retrospective setting of differences**

130. In section 5.2 of the method, ACM explains how it deals with differences between the determined allowed revenues and the actual costs incurred.
131. In the operation of the chosen profit-sharing methodology, the allowed revenues for a particular year are determined in advance and the difference between those revenues and the costs incurred by the distributor in that year is then determined retrospectively. ACM sets part of that difference, namely 50%, against the revenues for the next calendar year. The remainder is for the account of the company, and is a profit or loss (depending on the aforementioned difference).
132. This retrospective examination will be carried out for 2024 with reference to the 2026 tariff proposal, when the actual costs of SEC for 2024 are revealed by the independent audit of the 2024 financial statements.
133. ACM has stated in the method that this retrospective examination includes a correction for differences in volume. Specifically for the distribution of electricity by SEC, this concerns the estimate of the number of end-users, as stated in Annex 3.
134. If this volume turns out higher or lower, ACM will apply a correction before examining whether the SEC incurred higher or lower costs than previously estimated. These differences are due to be set in 2025 and ACM will incorporate any differences in the distribution tariffs for 2026.

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## 6 Provisions

135. On the basis of Section 3.14, paragraph 1, of the BES Electricity and Drinking Water Act, ACM sets the maximum electricity distribution tariffs that Saba Electric Company N.V. will charge end-users from January 1st, 2024, in accordance with the amounts stated in Annex 2 to this decision.
136. On the basis of Section 3.9, paragraph 4, of the BES Electricity and Drinking Water Act, ACM sets the electricity reconnection tariff that Saba Electric Company N.V. will charge end-users from January 1st, 2024 at USD 25.
137. 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)).
138. 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 3).

Distribution tariffs 2024	Unit	
<b>Variable distribution tariff electricity</b>	USD, pl 2024 / kWh	0,3810
<b>Fixed distribution tariff electricity</b>		
Income per kVA per month	USD, pl 2024 / month	8,87
3,2 kVA	USD, pl 2024 / month	28,39
7,7 kVA	USD, pl 2024 / month	68,31
13,3 kVA	USD, pl 2024 / month	117,99
18,3 kVA	USD, pl 2024 / month	162,34
23,3 kVA	USD, pl 2024 / month	206,70
28,3 kVA	USD, pl 2024 / month	251,05
38,3 kVA	USD, pl 2024 / month	339,76
48,3 kVA	USD, pl 2024 / month	428,47
63,3 kVA	USD, pl 2024 / month	561,54
78,3 kVA	USD, pl 2024 / month	694,60
83,3 kVA	USD, pl 2024 / month	738,96
93,3 kVA	USD, pl 2024 / month	827,67
98,3 kVA	USD, pl 2024 / month	872,03
100 kVA	USD, pl 2024 / month	887,11
125 kVA	USD, pl 2024 / month	1.108,88
150 kVA	USD, pl 2024 / month	1.330,66
350 kVA	USD, pl 2024 / month	3.104,87
<b>Tariff for reconnection</b>		
Tariff for reconnection	USD, pl 2024	25,00
<b>Tariff for connection</b>		
Standard tariff 3.2 kVA	USD, pl 2024	291,70
Standard tariff 7.7 kVA	USD, pl 2024	327,05
Tariff per meter for trenchwork	USD, pl 2024 / meter	93,05

## Annex 2: Overview of tariffs

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

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## Annex 3: Calculation of tariffs

ACM has published on its website ([www.acm.nl](http://www.acm.nl)) the “Calculation of tariffs for SEC in 2024” Excel file, containing the maximum distribution tariffs calculation model for SEC. This file has been published as an annex to this decision, forms an integral part of it and can be found on the publication page of this decision at [www.acm.nl](http://www.acm.nl).