

Regulation of the Minister of Economic Affairs of _____, nr. WJZ/14195104, containing rules regarding the production and the distribution of electricity and drinking water on Bonaire, Sint Eustatius and Saba (Ministeriële regeling elektriciteit en drinkwater BES)

The Minister of Economic Affairs, acting in cooperation with the Minister of Infrastructure and Environment;

Noting article 2.5, seventh paragraph, 3.9, fifth paragraph, 3.10, third paragraph, 3.14, eighth paragraph, 3.16, fourth paragraph, 3.17, third paragraph, and 4.1, second paragraph, of the law electricity and drinking water BES and article 4.1 and 4.2 of the governmental decree (Besluit) electricity and drinking water BES;

Decrees:

§ 1. General

Article 1.1 (definitions)

In this regulation definitions are:

decree: decree electricity and drinking water BES

severe disruption of electricity: an unforeseen disruption of the supply of electricity of four hours or longer;

law: law electricity and drinking water BES.

§ 2. Rates of production and distribution of electricity and drinking water

Article 2.1 (setting of production price and rate)

1. The Authority for Consumers and Markets sets the method meant in the articles 2.5, fourth paragraph, and 3.14, fifth paragraph, of the law after consultation of stakeholders, for a period of four to ten years.
2. The method describes how the production price and the rates are established in such a manner that it incentivises the producer and distributor to an expedient operation of business, provides for a return on investment which is usual in economic terms and serves a reliable, affordable and sustainable energy and drinking water supply.
3. In the method at least the manner of determining the expected efficient costs is established, and to that aim the manner of determining the return on investment which is usual in economic terms.
4. In the method, the manner in which the energy costs are determined as part of the production price is established.
5. A producer or distributor submits a proposal for a change of rates to the Authority for Consumers and Markets four months before the envisaged date of the change coming into effect.

§ 3. Distribution of electricity and drinking water

Article 3.1 (disconnection policy)

1. A distributor does not stop the distribution of electricity or drinking water because of a default in payments by a customer if the customer owes a debt of

less than 50 USD in total, unless the first reminder to pay was sent more than six months before the moment of disconnection.

2. If a customer has received electricity or drinking water during an uninterrupted period of twelve months and his total debt is less than 300 USD, a distributor disconnects a customer because of a default in payments by the customer at the earliest six months after the first reminder to pay was sent.

3. In case of a disconnection of electricity which is based on a mistake by a distributor, the distributor compensates the disconnected customer once with an amount that corresponds to the compensation of a corresponding severe disruption of electricity, meant in article 3.4, with a maximum of 100 USD.

Article 3.2 (lump sum payment for reconnection)

The lump sum payment for reconnection to be set by Authority for Consumers and Markets, meant in article 3.9, fourth paragraph, of the law does not exceed the efficient costs which a distributor incurs for the reconnection.

Article 3.3 (preventive measures)

A distributor informs customers who do not pay their bills in time with each reminder about water or energy savings, water or energy efficiency, debt relief aid programmes (schuldhulpverlening) or the possibility to pay up front.

Article 3.4 (compensation in case of a severe disruption of the distribution of electricity)

1. The height of the compensation in case of a severe disruption of electricity of the distribution of electricity is set according to annex 1 attached to this regulation.

2. The duration of a severe disruption of electricity is calculated from the moment of reception of the first notification of a severe disruption of electricity by a customer or, if it is earlier, the moment of determination of that severe disruption of electricity by a distributor until the moment the severe disruption of electricity is resolved.

3. A distributor does not owe compensation:

- a. to a customer who has not paid the two most recent monthly bills;
- b. if a severe disruption is caused by a natural disaster, intentional destruction or military violence.

4. There is no entitlement to compensation if during a severe disruption no electricity would have been consumed.

Article 3.5 (pre paid, pagabon)

The yearly usage, meant article 3.17, third paragraph, of the law amounts for electricity to 2,500 kWh.

Article 3.6 (frequency of meter reading)

The usage of a connection for electricity with a capacity of 3 * 80 A or less without a meter that can be read electronically from a distance, or of a connection for drinking water is at most recorded once per half year by a distributor.

§ 4. Specific rules for electricity and drinking water

Article 4

The compensation for feed-in of durably generated electricity by customers, meant in article 4.1, second paragraph of the law, is set according to annex 2 attached to this regulation.

§ 5. Granting of a permit to a producer and appointment of a distributor

Article 5.1 (requirements to the application for a permit or appointment)

1. An application for a permit as meant in article 2.2 of the law or of an appointment as meant in article 3.2 of the law is accompanied by the following most recent documents of the applicant for production or distribution of electricity or drinking water:
 - a. approved yearly financial statement,
 - b. budget,
 - c. long term plans, and
 - d. contracts with third parties and the obligations resulting thereof and others multi-year legal obligations which are of importance for the execution of his task and for his financial quality.
2. Contrary to the first paragraph an application by a legal person who does not exist for at least one year is accompanied by a business plan including the financial and technical plans and draft contracts or contracts with third parties and the obligations issuing thereof and other multi-year legal obligations which are of importance for the execution of his task and for his financial quality.
3. An application of an integrated company can pertain to both a permit as producer as an appointment as distributor.
4. An application of a producer of electricity who is not part of an integrated company is accompanied by a contract or a draft contract with a distributor of electricity.
5. Notwithstanding the first up to the third paragraph an application with an expected yearly revenue from production or distribution of less than half a million USD is accompanied by a budget.
6. Our Minister requests the government (bestuurscollege) of the relevant public body for advice about the application.
7. Our Minister can obtain information from other producers or distributors than the applicant for the review of an application.
8. Our Minister can send a reasoned request for additional information to the applicant.

§ 6. Other rules

Article 6.1

This regulation enters into effect on

Article 6.2

This regulation will be referred to as: regulation electricity and drinking water BES.

This regulation with the explanation will be published in the Staatscourant.

's-Gravenhage, the Minister of Economic Affairs,

Annex 1. The height of the compensation in case of a severe disruption of the supply of electricity.

Capacity of the connection (sum of the maximum amperage) and voltage (in kV)	Duration of the severe disruption	Compensation per continuous period of 4 hours.
Up to (inclusive) 108 A	Less than 4 hours	0 USD
	4 hours or more	25 USD
Above 108 A and maximum 1 kV	Less than 4 hours	0 USD
	4 hours or more	125 USD
Above 108 A and more than 1 kV	Less than 4 hours	0 USD
	4 hours or more	625 USD

For the duration of a severe disruption after 40 hours there is no additional compensation owed on top of the compensation based on a duration of 40 hours.

Annex 2. The feed-in compensation for electricity generated by customers.

Public body	Capacity of the connection (as sum of the amperages of each phase)	Feed-in tariff per kWh.
Bonaire	Up to (inclusive) 108 A	0,05 USD
Bonaire	Above 108 A	0,02 USD
Sint Eustatius	Up to (inclusive) 108 A	0,05 USD
Sint Eustatius	Above 108 A but less than 1.000 A	0,03 USD
Sint Eustatius	1.000 A or more	0,01 USD
Saba	Up to (inclusive) 40 A	0,05 USD
Saba	Above 40 A	0,01 USD

Explanation

1. Contents regulation

1.1 process and manner of calculation of the production and the distribution rate

The law electricity and drinking water Bes (hereafter: the law) prescribes that the Authority for Consumers and Markets (ACM) set a method for the production and the distribution rate which encourages the company to an expedient operation of business. The method describes how the real costs are the basis for the rates including an efficiency incentive. The exact form in practice can differ for production and distribution.

The following three steps are foreseen: (1) the manner of calculation of the expected and real costs for which amongst others the provision of information by the company, the depreciation periods, and the determination of the value of the start-assets are of importance; (2) the manner in which these costs are the basis for the yearly income, in which there is a role for settlement of real costs in later years; and (3) the manner in which income and expected sales are the basis for the rates. The more precise the method is established, the easier is the yearly calculation of the rates, reducing administrative burden and work for companies and the ACM.

Regarding the energy costs there is the option in article 2.5, third paragraph, of the law) that the energy costs are set as a monthly varying part of the production price. In the method this will be elaborated on. For this a relation with for instance a public price quotation of oil products in the region seems logical, as this encourages to procure as cheap as possible, as opposed to a method in which the realised procurement price is regarded as costs.

1.2 Disconnection policy and reconnection

Electricity and drinking water are necessities of life. It is therefore undesirable that customers are disconnected from the supply. Yet it is necessary that a distributor can disconnect customers. If a distributor could not, there would not be a realistic pressure to pay. To find the balance between these interests a number of preconditions for the disconnection policy are set in this regulation, after which the distributor determines his disconnection policy in detail. The regulation sets preconditions and does not prescribe the entire disconnection policy. Hereby a company can develop additional disconnection policies, for instance regarding vulnerable customers. The disconnection policy is furthermore under supervision of the ACM.

A customer should not be disconnected too soon after a default in payments arises. Therefore it is stipulated that a customer whose payment behaviour has not led to disconnection for a year, can only be disconnected after six months after his default started, unless his cumulative debt is more than 300 USD. Also in case of a debt of less than 50 USD in total, one is disconnected not earlier than after six months of default. Because of the importance of an uninterrupted supply, a distributor has to compensate a customer if a disconnection is based on an error from the distributor. The amount of the compensation is equal to the compensation for a severe disruption, as a disconnection caused by an error has the same material effect for the customer.

Furthermore, it is undesirable that a distributor would make a profit from disconnecting and later reconnecting a customer. Therefore the reconnection fee has to cover the efficient costs. Then there is no profit on the one hand, and on the other hand, no costs are carried by third parties.

In some cases a threat of disconnection can coincide with social-economic problems. Therefore a distributor has to put an effort in helping prevent a disconnection. This can be done by information about debt relief programs, and as far as electricity is concerned about energy savings and energy efficiency. If the distributor offers pre paid contracts (*pagabon*), a customer can benefit from information about this possibility.

1.3 compensation for a severe disruption of the distribution of electricity

Electricity supply has to be reliable. To set an economic incentive for the distributor (and via his purchase contract for the producer) he owes the customer a compensation if there is a severe disruption of electricity. This compensation functions also to (partially) cover the material damage that is caused by the severe disruption. No compensation is due if a severe disruption is the result of intentional violence like a military conflict or intentional destruction. Intentional destruction is an act with the aim of damaging the infrastructure. This does of course not pertain if the intentional violence was caused by a person working for a distributor. Also no compensation is due if this is the result of natural violence like a hurricane, an earthquake, seaquake, landslide, a tidal wave, comet impact or volcanic activity. Finally, no compensation is due to a customer who is two months overdue with his payments, or if the connection would not have been used during the severe disruption. For this last option, the burden of proof lies with the electricity distributor. This clause establishes the possibility to not pay compensation to, for instance, the owners of uninhabited vacation homes.

The compensation is calculated as a fixed amount for each entire or partial four hour period in which no electricity was distributed, except that for a disruption of four hours or less no compensation is due. Between four and eight hours twice the fixed amount is due, because a second four hour period has started. Between eight and twelve hours three times the fixed amount is due and so on. If there is a very long severe disruption with many affected customers it is conceivable that the total compensation to customers becomes so high that the continuity of the company is endangered. Therefore, there is a maximum to the compensation by prescribing no further compensation after 40 hours. Indicative calculations based on the present frequency and duration of severe disruptions show that distributors in the public bodies will pay on average a comparable part of the company turnover in compensation as operators of electricity grids in The European Netherlands, although individual distributors score better or worse than this average.

For a severe disruption in the distribution of drinking water no compensation is owed because the distributor has to provide water in another manner in case of a severe disruption as stipulated in the law.

1.4 Composition of the pre paid (pagabon) rate from both fixed and variable costs

The law discerns as the two most important rates the fixed rate which is independent of usage and the variable rate which is dependent on usage and is expressed as a rate per kWh or per cubic meter of water. This difference sprouts

from the cost orientation of the rates. Costs which are independent of usage like network costs are part of the usage independent rate.

To offer more choice to consumers the law also allows a distributor to charge a prepaid usage dependent rate in which no fixed rate is charged. In this case the fixed costs have to be part of the usage dependent rate. Otherwise, the prepaid contract would be structurally cheaper than a normal contract. The yearly usage which is taken as a basis for the addition of fixed costs is also the yearly usage at which a prepaid and a normal contract are financially equally attractive for the consumer. At a lower yearly usage the prepaid contract is more attractive, because not all the kWh's to which the fixed rate is added are taken and charged. At a higher yearly usage *vice versa* a normal contract is more attractive.

In deciding the yearly usage which is taken as the basis for the addition of fixed costs to the variable rate in a prepaid contract, the starting point is that for an average usage a normal contract has to be more attractive. Hereby cost orientation which is included in the law is the norm. The main aim of prepaid contracts is to provide an attractive alternative for less wealthy customers and reduce the risk of financial problems or default by prepaying. The decision for the yearly usage which is taken as basis, was based on the notion that these less wealthy customers have a smaller than average usage. The average usage on consumer connections for electricity is approximately 4,500 kWh per year. Based on this the yearly usage which is taken as basis for the addition of fixed costs to the variable rate in a prepaid contract is 2.500 kWh.

Moreover, a distributor is allowed to offer his customers a system of prepayment of the normal usage dependent rate which is due next to the usage independent rate. The normal usage independent rate has to be collected periodically. Such a prepayment contract could be a service for the owners of vacation homes who want to have their renters pay directly for their factual usage.

1.5 Frequency of recording usage from meters

In The European Netherlands a person is sent for recording usage from meters usually only once in a number of years (besides smart meters which can be read from a distance). In between, customers send in their own readings and approximations and calculations are used to allocate usage over time. This is also the case when rates change. There is no reason to diverge from this efficient way of working in The Caribbean Netherlands. It has been suggested that monthly usage recording avoids subsequent extra payments and restitutions. To this aim a customer can keep track of his own usage and thereby of his final settlement. Finally in case of a distributor who offers customers prepaid (*pagabon*) contracts, such a contract can avoid a final settlement.

1.6 Feed-in compensation for electricity

The law establishes that customers of an electricity distributor can provide for a part of their own electricity supply by means of own durable production. In this respect mostly solar energy is envisaged. It is not a reasonable general condition if a distributor prohibits a customer to produce for its own consumption, as is the case in all three public bodies until the moment the law takes effect. At times that own production is higher than own use a customer can feed surplus electricity into the network. This electricity has a value as the distributor can sell this on to

another customer. So the distributor can pay a feed-in compensation to the customer who feeds into the electricity grid.

But in view of the entire island's electricity supply the customers with own production save mostly electricity that could also have been produced by other parties with low marginal costs (solar panels). Durable production has low marginal costs after all. At times that these customers produce no electricity themselves (at night) they draw electricity from the grid that is produced with high marginal costs (diesel powered generators). For the electricity they draw, they pay a standard rate which is based on the average production price, although they draw on average more electricity which is produced at a higher production price. To mitigate this imbalance the feed-in compensation is set low, at 0,05 USD per kWh for small connections and lower for larger customers. Moreover a distributor of electricity can include in his rate proposal to ACM also different rates for day and night if he substantiates this with cost differences.

1.7 granting of permits and appointments

The law stipulates that producers have a permit and distributors an appointment of the minister. In the transitory clauses it is stipulated that the present holders of concessions have two year to apply for one. The law is effective in this period as if they had a permit or appointment. The present concessions date partly from Antillean law that was in force until October 10, 2010.

An applicant has to submit documents with his application which are of importance for the assessment of the application. This includes budgets, yearly statements and contracts which are essential for the operational and financial business. There are a number of integrated companies that are both producer and distributor. These can request with one application for both a permit as producer and an appointment as distributor. Companies that are active in the field of drinking water and electricity cannot submit a combined application, because these have to be sent to different ministers. An electricity producer which is not integrated with the Electricity distributor has to provide a contract or draft contract with the distributor. Statements of auditing accountants can supply further substantiation that the applicant will satisfy the legal requirements.

The minister has to ask the government of the public body (bestuurscollege) for advice. This advice will weigh heavily in his assessment. Furthermore, the minister can ask how other producers or distributors view the application because in the small supply sectors on the islands the activities of a party can be of direct and large influence on other parties.

There are a few very small businesses active as producer of drinking water. To limit the administrative burden for them, these have to include in principle only a budget with their application.

2. Consultation

3. Technical stipulations

4. Effects on companies and burden of legislation

5. Supervision and enforcement

The Minister of Economic Affairs,