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Proposal for Act encompassing rules with regard to the production and distribution of electricity and drinking water in Bonaire, Sint Eustatius and Saba (BES Electricity and Drinking Water Act)

We, Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Oranje-Nassau, etc., etc., etc.

To all who will see this or hear it read, greetings! Be it known:

Whereas we have considered that it is desirable, considering the importance of the reliable, sustainable and appropriate functioning of the electricity and drinking water supply in Bonaire, Sint Eustatius and Saba, to establish rules with regard to the production and distribution of electricity and drinking water;

Thus it is, that We, by the advice of the Council of State, and with the consent of the States General, have assented and understood as We hereby assent and understand:

## Chapter 1. General stipulations

### Article 1.1

In this Act and the stipulations based on it, the following is understood under:

- Connection: a connection between an electricity or drinking water network and a consumer's installation;
- Consumer: a natural person or legal entity using electricity or drinking water for own use;
- Authority for Consumers and Markets (*Autoriteit Consument en Markt*): the Authority for Consumers and Markets, mentioned in Article 2, first section of the Act establishing the Authority for Consumers and Markets;
- Distribution: the transport and supply of electricity or drinking water to consumers through networks or through means of transport as intended in Article 3.8;
- Drinking water network: a structure of pipes and interconnected couplings, valves and other technical provisions for the transport and supply of drinking water;
- Electricity network: one or more connections intended for the transport of electricity and the interconnected transformer stations, switching stations, distribution stations and substations, and associated equipment;
- Renewable electricity: electricity, generated in a production installation, making exclusive use of wind, solar power, ambient air, surface water and geothermal heat, energy from the oceans, hydropower, biomass, landfill gas, sewage treatment plant gas or biogas;
- Network: an electricity network or a drinking water network;
- Our Minister: Our Minister of Economic Affairs, for as far it pertains to electricity, or Our Minister of Infrastructure and the Environment, for as far as it pertains to drinking water;
- Vertically integrated company: company or group of companies in which production and distribution take place.

### Article 1.2

This Act is applicable to Bonaire, Sint Eustatius and Saba.

## Chapter 2. Production of electricity and drinking water

### § 2.1 Permitting and establishment of producer

## Article 2.1

1. It is illegal to produce electricity or drinking water for distribution to consumers without a permit.
2. Contrary to the first section, a permit is not required for the production of renewable electricity by an installation which generates power mainly for individual use, by a consumer, and in which case the electricity which is not used is fed into the network, taking into consideration Article 4.1 and 4.2.

### Explanatory notes

Article 2.1 stipulates that the production of electricity and drinking water which is intended for distribution through networks or through means of transport, such as tank lorry and boat, on the islands, is reserved for legal entity with a permit. If generated without a permit, the ACM (Authority for Consumers and Markets) can impose an administrative fine. The only exception in this regard, is the production of renewable electricity, mainly solar power, generated by consumers for individual consumption. If the production installation produces more than what is used by the consumer at that time, this extra electricity can be fed into the network. Articles 4.1 and 4.2 are specifically applicable in this regard. Rainwater which is collected in cisterns is not intended for distribution to third parties and collection is not subject to a permit. The distribution of water in bottles is not included in the scope of this Act and the production of such water is therefore not subject to a permit either.

## Article 2.2

1. Our Minister grants a permit for a period of ten years to a legal entity which:
  - a. has the necessary organisational, financial and technical qualities for proper execution of the task;
  - b. can reasonably be deemed capable of observing the obligations and of executing the tasks, as included in this chapter.
2. An order is linked to the permit with regard to the minimum amounts of electricity or drinking water that must be produced.
3. Our Minister can also link an order to the permit, making it mandatory for the producer to provide financial security for the observance of the obligations imposed on them by virtue of this chapter, with regard to the production of electricity or water.
4. Our Minister can also link other orders and restrictions to the permit.
5. Our Minister may revoke the permit if the producer is unable to observe the obligations or is unable to execute the tasks indicated under or by virtue of this chapter.
6. Under or by virtue of governmental decree, further rules may be imposed with regard to the procedure for permitting, the criteria, intended in the first section and the contents of the permit, the orders and restrictions, intended in the second, third and fourth section.

### Explanatory notes

Article 2.2 provides the basis for producer permitting. The Minister of Economic Affairs or of Infrastructure and the Environment grants at least one producer in each public body a permit for the production of electricity or drinking water, on condition that the intended producer complies with the obligations. This producer may produce both electricity and drinking water, and this producer may also form part of a vertically integrated company in which the distribution of electricity and drinking water is also encompassed, but all of this is not a prerequisite. Several producers can also be granted a permit, but these producers will then also have to comply with the requirements and obligations imposed on them based on this Act.

The Minister can link orders and restrictions to the permit. One of these orders will entail that it be stipulated for which production quantity the producer is responsible, in the ambit of the tasks imposed on the producer pursuant to Article 2.3. This order is of particular importance if several producers have a permit on one island.

Pursuant to the third section, the Minister may also link an order to the permit, imposing an obligation on the producer to provide financial security. The goal is to guarantee that the producer observes its tasks pursuant to the Act, and does not simply cease production, for example. This may involve the following forms of financial security: a security deposit or a bank guarantee and a

mortgage or right of pledge. The amount for which the financial security is maintained will not exceed that which is reasonably needed to cover the expenses for observance of the obligations imposed by virtue of the Act.

## § 2.2 Tasks and obligations of the producer

### Article 2.3

1. A producer is charged with the task of, taking into consideration the permit:
  - a. ensuring reliable and high-quality production;
  - b. guaranteeing that over a long period the demand for electricity or drinking water can be met. If several producers are appointed, said producers will meet this demand together and each producer will produce at least the amount defined in the relevant permit;
  - c. management, maintenance and development of the installations and materials that are used for production, in a manner that guarantees the safety, efficiency and reliability of production, taking into consideration the environment and public health.
2. Under or by virtue of Governmental decree, further rules are imposed with regard to the tasks, mentioned in the first section, in which case, with regard to drinking water, rules are at least imposed concerning:
  - a. the quality, including minimum requirements for drinking water with respect to micro-organisms, parasites or other substances, in quantities or concentrations that could endanger public health;
  - b. quality control and reporting by the producer.

#### Explanatory notes

The tasks of the producer are included in Article 2.3. The most important task of the producer is to provide a reliable supply and of good quality (first section, under a), and to produce in sufficient volumes to meet the overall demand on the island (first section, under b). If several producers have a permit, said producers must meet the overall demand on the island together, and each producer must supply at least the amount of electricity or drinking water defined in the relevant permit.

The task, mentioned in the first section under c, entails that the production installation must be safe and production must be established in such a manner that the burden on the environment is restricted.

By virtue of the second section, further requirements will be imposed on the interpretation of these tasks, whereby, in any event, further rules will be imposed on the quality of the product to be supplied. For drinking water, these requirements could involve the quality of the drinking water and the manner in which the quality system must be established.

### Article 2.4

1. It is mandatory for a producer to keep separate accounting for its statutory tasks.
2. The separate accounting contains:
  - a. a balance sheet account and a profit and loss account;
  - b. a specification of the allocation of the assets and liabilities and expenditure and revenue related to the tasks, intended in Article 2.3, whereby, if applicable, differentiation is made in the allocation of electricity or drinking water;
  - c. explanatory notes on the rules used for depreciation.

#### Explanatory notes

Article 2.4 stipulates that the producer must keep orderly accounting records with regard to the production of electricity and drinking water. A producer may be part of a larger organisational unit in which other activities are also conducted, above and beyond the production in question.

Furthermore, the producer can also produce electricity and drinking water. The cost entries that pertain to several activities must be allocated to the production of electricity and drinking water, based on distribution codes. This allocation must be performed in a causal, transparent and consistent manner.

## § 2.3 Regulation of the producer tariff

## Article 2.5

1. The Authority for Consumers and Markets establishes, each year, based on the producer's proposal, the maximum production price which will be charged by this producer, to the distributor, for the electricity produced or for the drinking water produced.
2. The production price for electricity and drinking water:
  - a. is based on the actual costs of production, taking into consideration a reasonable return;
  - b. is structured from a component which is dependent on consumption, expressed in an amount in USD per kWh, or an amount per cubic metre of drinking water and a component which is independent of consumption, expressed in an amount in USD.
3. The component which is dependent on consumption comprises the operational and maintenance burdens and the energy costs related to production.
4. The component which is independent of consumption comprises the capital expenses.
5. The Authority for Consumers and Markets may decide to implement a discount on the component dependent on consumption, to promote efficient business management.
6. If a producer and the distributor form part of a vertically integrated company, internal settlement will take place, based on the price intended in the first section.
7. Further rules may be imposed by ministerial regulation, with regard to the procedure and the elements, and the manner in which tariffs are calculated, intended in this article.

### Explanatory notes

The regulation of the producer tariff is included in Article 2.5. The ACM establishes, pursuant to this article, at the producer's proposal, the maximum price which the producer may charge to its only buyer, the distributor. This price will be the base of the tariff for consumers, pursuant to paragraph 3.3. The production price is based on the actual costs incurred by a producer and takes into consideration a reasonable return (cost plus regulation). An individual price will be established for drinking water and electricity, and cross-subsidies will not be allowed. All costs related to the production will be discounted in the price.

The production price is structured from three elements: the operational and maintenance burdens (the x-component), the fuel or energy costs (the y-component) and the capital expenses (the z-component). The first two elements are included in the component of the production price which is dependent on consumption, and this component will be charged to consumers by way of the variable consumption tariff, intended in Article 3.14, second section, under c. The capital expenses are included in the component of the production price which is independent of consumption, and will be included in the fixed consumption tariff. In this way, the fixed costs for production are always paid in the fixed consumption tariff.

The fifth section stipulates that the ACM may implement a discount on the production price in order to provide an efficiency incentive to the producer. The producer, in turn, must apply a cost reduction, in order to attain the desired return.

Further requirements may be imposed by ministerial regulation, with regard to, amongst others, the procedure and elements, and the manner in which tariffs are calculated. This may involve, for example, the latest date at which the producer must make a tariff proposal. For the time being, it a further specification is not yet a necessity, and the ministerial regulation is optional.

## Chapter 3. Distribution of electricity and drinking water

### § 3.1 Appointment and establishment of distributor

#### Article 3.1

It is illegal to distribute electricity or drinking water without an appointment as intended in Article 3.2.

### Explanatory notes

Article 3.1 stipulates that the distribution of electricity and drinking water may only be performed by an appointed distributor, or for drinking water on Saba, by the appointed company, intended in Article 3.2, fourth section. The ACM can impose an administrative fine for distribution without

appointment by Our Minister. The supply of electricity generated individually is therefore also prohibited from being distributed through individual networks to third parties.

#### Article 3.2

1. Our Minister appoints one limited liability company as distributor for each public body. The distributor:
  - a. has the necessary organisational, financial and technical qualities for proper execution of his task;
  - b. can reasonably be deemed capable of observing the obligations and of executing the tasks, as included in this chapter.
2. Our Minister can link orders and restrictions to the appointment.
3. Our Minister may revoke the appointment if the distributor is unable to observe the obligations or is unable to execute the tasks indicated under or by virtue of this chapter.
4. If a drinking water network is not present in the public body, Our Minister will appoint, contrary to the first section, a company as distributor, and this company will be charged with distribution of drinking water by way of tank lorries, tankers or other means of transport, intended in Article 3.8, at a tariff which is established in accordance with Article 3.13 and 3.17. The other articles of this chapter are not applicable.

#### Explanatory notes

Article 3.2 governs the Minister's authority to appoint. The Minister appoints one limited liability company as distributor for electricity or water, per public body. The distributor for electricity and drinking water may be the same legal entity, but this is not necessary. Orders and conditions may be linked to the appointment. The appointment applies for an indefinite period, but may be revoked if the distributor is unable to observe its obligations or is unable to execute its tasks.

An electricity network is in place for all of the islands and a distributor for electricity will therefore be appointed for all islands. This is not the case with drinking water. Plans have not been made for a drinking water network in Saba in the near future. One or more companies will be appointed, however, to distribute drinking water by way of tank lorries, tankers or other means of transport, at regulated tariffs, as intended in Article 3.8. These companies do not have to comply with the other requirements included in this chapter. The drinking water supplied by these companies will, however, have to comply with the requirements imposed by virtue of Article 2.3, second section, with regard to the production of drinking water, and these companies are also obliged to perform the task for a regulated tariff.

#### Article 3.3

1. A distributor has ownership of the network that it operates.
2. A distributor's shares are directly or indirectly encompassed within the state, provinces, municipalities or the public bodies Bonaire, Sint Eustatius or Saba.

#### Explanatory notes

This article stipulates, in the first section, that the distributor must have ownership of the network that it operates. The second section stipulates that the distributor must be publicly owned. If the distributor's shares are owned by the public body, the Island Council, intended in Article 6 of the Law on the public bodies Bonaire, Sint Eustatius and Saba, will form the distributor's general assembly of shareholders.

By directly encompassed, as intended in the second section, is understood that the ownership of the network, or the distributor's shares, is / are encompassed with one or more legal entities of which all shares are held by the state, provinces, municipalities or other public bodies, or by a legal entity that is a full subsidiary of one or more legal entities of which all shares are held by the state, provinces, municipalities or public bodies.

#### Article 3.4

1. The distributor's Supervisory Board consists of no more than three members.

2. A member of the company's Supervisory Board is only appointed after Our Minister has agreed with the appointment.

#### Explanatory notes

In order to keep the costs for electricity and drinking water as low as possible, it is stipulated in Article 3.4 that the internal supervisory body, the Supervisory Board, may not consist of more than three individuals. The Supervisory Board's members are appointed by the shareholders, but Our Minister has to agree with the appointment first.

#### Article 3.5

1. The distributor maintains proper financial management and has sufficient capital and reserves to allow for necessary investments in the networks
2. The total debt divided by the sum of the total debt and capital and reserves, including minority interests and preferred shares, may not exceed 0.8.

#### Explanatory notes

In this article, requirements are imposed on a distributor's financial management, in order to ensure that a distributor is not running major financial risks and as a result will always be able to perform its statutory tasks. In this case it specifically involves the investments that a distributor must make in its networks, to keep these functioning, maintained, renewed and expanded. The criteria included in the second section, governs the ratio between borrowed capital and total assets. In other words, the proportion between the total debt and the total value of the company. It is stipulated that a distributor must have at least 20% capital and reserves.

A sufficient buffer must be in place to cushion incidental losses. Under total debt is understood the debt to providers for borrowed capital, as is evident from the distributor's balance sheet. This, contrary to capital and reserves, originating from the providers of equity. The differentiation between borrowed capital and capital and reserves is generally quite clear, although there are different forms of borrowed capital products with similar characteristics to capital and reserves, such as convertible bond loans. The distributor's accountant does, however, verify the characteristics of these types of products, as part of their annual accounting audits, and thereby guarantees correct categorisation of these products. The total capitalisation means adding together capital and reserves and borrowed capital, in totality, therefore all assets. This includes short-term debts, whether subject to interest or not, and the provisions. With regard to the dividend, it applies that the proposed dividend should still be deducted from the distributor's capital and reserves. The distributor adds an overview to its financial statements, annually, indicating that it complies with this ratio, pursuant to Article 3.12, fifth section.

#### § 3.2 Tasks and obligations of the distributor

#### Article 3.6

1. The distributor is charged with the task of:
  - a. guaranteeing that the network can supply, in the long-term, in the reasonable demand for the transport of electricity or drinking water, and that this transport can be carried out;
  - b. management, maintenance and development in a manner that guarantees the safety, reliability and efficiency of its network, taking into consideration the environment and public health;
  - c. providing consumers a connection to the network, if this is responsible from a business-economic perspective;
  - d. ensuring the installation of a metering device and the management and maintenance of the metering device with consumers.
2. In addition to the first section, the distributor is also charged with the task of:
  - a. ensuring a reliable supply of electricity or drinking water, taking into consideration good quality service;
  - b. measuring the amount of electricity or drinking water consumed;
  - c. providing a complete and sufficiently specified notice to the consumers, at least once a year, with regard to the services provided;
  - d. establishing reasonable general terms and conditions for supply;

e. informing the consumers, in an adequate manner, with regard to every change in the tariffs for the distribution of electricity and drinking water, and of any intention to change the general terms and conditions.

#### Explanatory notes

The tasks of the distributor are included in this article. The first section lists the tasks that relate to the distributor's transport function. The second section lists the tasks that relate to the supply function. The tasks, intended in the first section, under a and b, are strongly related to one another and stipulate that the distributor must be able to provide in the demand for transport, and that the networks must be managed, maintained and developed for this purpose, in a safe manner, taking into consideration the environment. A large part of the costs incurred by a distributor are associated with these tasks.

In the first section, under c, the distributor's obligation to provide for a connection to the network is included, if this is responsible from a business-economic perspective. The costs related to carrying out this connection are charged individually, once-off, pursuant to Article 3.15. The tariffs are identical for all comparable connections with a length up to 50 metres. An additional price is charged, per metre, for all connections that exceed 50 metres.

In the first section, under d, the task is included to install a meter with all consumers, and to manage and maintain this meter. The costs for installation, management and maintenance of a meter are included in the fixed consumption tariff, and are therefore not charged individually, unless the meter is damaged on purpose by the consumer.

The second section, under a, stipulates that the distributor must supply good quality electricity or drinking water. Therefore, in addition to the producer, the distributor is also charged with guaranteeing the quality of the product that is supplied. Further requirements may also be included by Governmental decree, intended in Article 3.9.

In the ambit of the supply function, the distributor is also charged with the task of setting reasonable terms and conditions, and to send out a sufficiently specified notice to the consumers, at least once a year, to inform them of the tariffs.

#### Article 3.7

1. The distributor refrains from discriminating between consumers or consumer categories.
2. The distributor that obtains access to information of which the confidential nature is known, or should reasonably be expected, with execution of its tasks, is bound by the obligation to maintain confidentiality, except for in the event that any legislative requirement makes disclosure mandatory, or if it is necessary, in view of its tasks, to communicate the information.

#### Article 3.8

If a connection to the drinking water network is irresponsible from a business-economic perspective, the distributor is charged with the task of, at the request of a consumer, transporting drinking water by way of tank lorries, tankers or other means of transport, unless the distributor does not have reasonable capacity for the requested form of transport.

#### Explanatory notes

This article describes that a distributor is charged with the task of providing drinking water to consumers who are unable to be connected to the drinking water system, by way of tank lorries or other means of transport. This task can also be carried out by a company which has been appointed by the Minister, by virtue of Article 3.2, if there is no drinking water network in place on the island at all.

#### Article 3.9

Under or by virtue of Governmental decree, further rules are imposed with regard to the tasks, mentioned in Article 3.6 and Article 3.8, in which case, with regard to drinking water, rules are at least imposed concerning:

- a. guaranteeing the quality requirements imposed by virtue of Article 2.3, second section, under a, with supply;

b. quality control and reporting by the distributor.

#### Explanatory notes

This article serves as the basis for imposing further requirements under or by virtue of Governmental decree, with regard to the tasks that are described in Articles 3.8 and 3.9, whereby, in any event, further rules will be imposed concerning the quality of the drinking water to be supplied.

#### Article 3.10

1. The distributor does everything which is reasonably in its power to prevent shut-off or disruption to the supply of electricity or drinking water, or in the event that an interruption occurs, to remedy it as soon as possible.
2. The distributor notifies the consumer at least three days in advance, regarding any activities that the distributor has planned that will result in interruption to the distribution.
3. Rules are imposed by ministerial regulation with regard to termination of the distribution of electricity or drinking water, as well as concerning preventative measures to prevent termination, to the greatest extent possible.

#### Explanatory notes

The goal of Article 3.10 is to prevent shut-off and interruption in the supply of electricity and drinking water to consumers, to the greatest extent possible. It could be necessary, for example, to interrupt the distribution of electricity or drinking water for the purpose of expansion or repairs to the network, but if this is provided for, the second section stipulates that the distributor must inform consumers thereof at least three days in advance. Article 3.11 is not applicable in the event of unforeseen interruptions or failures.

With regard to the shut-off policy, the third section provides for a ministerial regulation in which rules are imposed concerning termination of distribution to consumers, as well as preventative measures to prevent shut-off to the greatest extent possible. The preventive measures may, amongst other things, entail that discussions take place with the involved authorities, and that information is provided to them. Furthermore, the goal of the decree is also to prevent overdue consumer payments from getting out of hand. This decree does, in this regard, also serve a signalling purpose, because overdue payments on the account could be an indicator that the consumer is suffering more extensive debt problems. The decree will state that the supply to consumers may only be shut-off when the process in the decree has been followed.

#### Article 3.11

1. The distributor provides a transparent, simple and inexpensive procedure:
  - a. for reporting failures and
  - b. for the treatment of complaints by consumers.
2. The distributor records, in terms of the reported malfunction, the date and the time at which the interruptions start, the duration of the interruptions, the location, nature and cause of the interruptions, as well as the number of consumers affected.
3. By Ministerial regulation the compensation value is set out in the event of a severe failure in the supply, which can be different for failures of various durations, and interpretation is provided of the concept of a severe failure.
4. The procedure intended in the first section, under b, provides for:
  - a. treatment of the complaint by a person who was not involved with the activities related to the complaint,
  - b. written notification and motivation with regard to the findings, to the complainer, in connection with the complaint and the conclusions related to it, and
  - c. rounding off the complaint as soon as possible, yet no later than eight weeks after the date of the complaint.

#### Explanatory notes

The distributor provides a procedure with which failures can be reported, and for the submission of complaints. The second section stipulates that a distributor must log failures. The distributor will

award compensation in the event of a severe failure. In order to determine when compensation must be paid, the distributor must (be able to) determine when a failure took place, how long this failure lasted, and which consumers were affected. Ministerial regulation from section three stipulates in which cases compensation must be paid, and the value of this compensation. Pursuant to the fourth section, the distributor should be able to treat complaints and disputes adequately.

#### Article 3.12

1. It is mandatory for the distributor to keep separate accounting for its statutory tasks.
2. The distributor's accounting records contain reliable and logically designed information concerning the integral expenses and revenue related to the distribution of electricity and drinking water.
3. The allocation of costs to activities that relate to the distribution of electricity and drinking water occurs in accordance with the actual use of financial or other resources for the activities.
4. In the explanatory notes to the financial statements, each company with which the distributor has entered into an agreement, and of which the earnings or the costs exceed an amount of USD 100,000, is listed.
5. The distributor adds an overview to its separate accounting, on an annual basis, from which it is evident that it complies with the requirement imposed in Article 3.5, second section.
6. The distributor makes its financial statements available for inspection by anyone at its principle place of business.
7. Title 5, Section 4 of Book 2 of the BES Civil Code is applicable to a distributor.

#### Explanatory notes

This article contains rules with regard to the accounting system and the financial statements of the distributor. The goal of this stipulation is to make the financial flow transparent and to facilitate supervision by the ACM. The supervisory body should be able to obtain sufficient insight into the business management and financial information of the permit holders. The distributor keeps separate accounting for each of these components, if it involves the distribution of electricity and drinking water.

The fourth section stipulates that the distributor is expected to list, in the explanatory notes to the financial statements, each company with which the distributor has entered into an agreement, where the value exceeds USD 100,000.

The fifth section pertains to the obligation to report, associated with the financial management requirements that are included in Article 3.5.

In Book 2 of the BES Civil Code, a decree is provided with regard to the financial statements, for the large company. Title 5, Section 4 is applicable to a company that complies with each of the criteria included in Article 119 of the Act. The criteria specify, amongst other things, the number of employees and the company's turnover. The seventh section of Article 3.12 stipulates that the articles from the relevant section will be applicable to distribution companies, after all, if these criteria are not satisfied. A stipulation which thereby becomes applicable is Article 121, which states that an external specialist will have to audit the financial statements and will have to provide a written statement in this regard.

#### § 3.3 Regulation of the distributor tariff

#### Article 3.13

1. The Authority for Consumers and Markets establishes, each year, at the distributor's proposal, the tariffs that will be charged by a distributor to consumers for the distribution of electricity or water, in which case said tariffs may vary for different consumer categories.
2. A distinction is made between four tariffs:
  - a. connection tariff;
  - b. fixed consumption tariff;
  - c. variable consumption tariff;
  - d. road transport tariff for drinking water.

3. The tariffs are non-discriminatory, transparent, and are based on the actual costs, taking into consideration a reasonable return.
4. The Authority for Consumers and Markets may decide to implement a discount to promote efficient business management.
5. The tariffs enter into force on a date to be determined by the Authority for Consumers and Markets, and are applicable until 1 January of the year following the date on which the decision to establish the tariffs entered into force.
6. If the tariffs for the year are not yet established on 1 January, the tariffs established for the previous year will apply until the date on which the decision to establish the tariffs entered into force.
7. Further rules may be imposed by ministerial regulation, with regard to the procedure and the elements, and the manner in which tariffs are calculated, intended in this article.

#### Explanatory notes

This article provides the basis for the regulation of the distributor tariff. The ACM establishes, each year, at the distributor's recommendation, the tariffs that will be charged by the distributor for the distribution of electricity or water. A distinction is made between four tariffs. This does not imply that there are only four tariffs, because different tariffs can be established within each tariff for different consumer categories. A different tariff is charged, for instance, for each connection capacity with the connection tariff.

The tariffs are non-discriminatory, transparent, and are based on the actual costs, or are cost-oriented. This implies that the tariffs serve to cover the costs to be incurred by the distributor for the benefit of the consumer. This naturally does not imply that the precise costs to be incurred by the distributor, for each individual consumer, must subsequently be established.

The tariffs are regulated based on a cost-plus principle. The actual costs, including a reasonable return, determine the actual tariffs. If these actual costs are too high, in the opinion of the ACM, it may decide to implement a discount, to promote efficient business management. This is arranged in the fourth section.

The tariffs established by the ACM apply, in principle, for one year, but if the tariffs for the following year are not established, the old tariffs remain in force until the moment at which the new tariffs are established by decree. The ACM Tariffs Decree is open for appeal and objection.

#### Article 3.14

1. The connection tariff discounts the costs that relate to the task, intended in Article 3.6, first section, under c.
2. The connection tariff is charged once-off to each consumer that is connected to the network, by the distributor.
3. The connection tariff is dependent on the size of the connection capacity and, if the length of the connection exceeds 50 metres, on the length of the connection, and is expressed in a fixed amount.

#### Explanatory notes

In the connection tariff, the costs related to the once-off connection of the consumer to the network, are discounted. The connection tariffs differ in proportion to the size of the connection capacity and are identical for all consumers with the same connection capacity, for a connection up to 50 metres. If the length of the connection between an installation and the network exceeds 50 metres in length, the connection tariff will be higher. An additional tariff will be established per metre.

#### Article 3.15

1. The fixed consumption tariff discounts the costs that relate to the tasks, intended in Article 3.6, first section, under a, b and d, and the component of the production price which is independent of consumption in Article 2.5, fourth section.
2. The fixed consumption tariff is charged to each consumer who receives electricity or drinking water at a connection, and with each consumer who feeds electricity into the network.

3. The consumption tariff is dependent on the size of the connection capacity, is calculated per connection and is expressed in a fixed amount in USD.
4. Contrary to Article 3.13, third section, a lower fixed consumption tariff may be established for certain consumer categories. By Ministerial regulation it may be stipulated that consumers with a low connection capacity may enjoy a discount on the fixed consumption tariff, in which case the discount percentage is established in the decree.

#### Explanatory notes

PM discussion on capacity tariff.

The costs that relate to the transport (investments in networks, repairs, etc.), the costs that relate to the installation and management of meters, and the capital expenses for central production, are approximately what is discounted in the fixed consumption tariff. The tariff is independent of consumption, but is determined by the size of the connection; a capacity tariff. A capacity tariff better connects to the principle of cost reflectivity; network costs are, after all, determined by the peak demand which must be available for supply. A person that only uses his entire connection value once a year still needs a network that can supply the demand.

The fourth section stipulates that it can be established, by ministerial regulation, that certain consumers with small-scale connections can enjoy a discount on the capacity tariff.

#### Article 3.16

1. The variable consumption tariff discounts the costs that relate to the tasks, intended in Article 3.6, second section, and 3.9 through 3.12, and the component of the production price which is dependent on consumption, intended in Article 2.5, third section.
2. The variable consumption tariff is charged to each consumer who receives electricity or drinking water at a connection, per kWh or cubic metre of water supplied.
3. The variable consumption tariff is expressed in an amount per kWh or per cubic metre of water.

#### Explanatory notes

The variable consumption tariff includes all costs that relate to the supply function of the distributor and the production price which is dependent on consumption. This price is paid by consumers per kWh or cubic metre of water.

#### Article 3.17

1. The road transport tariff discounts the costs that relate to the tasks, intended in Article 3.8, and is increased with the production price, intended in Article 2.5, second section.
2. The road transport tariff is charged to each consumer who receives water through a means of transport as intended in Article 3.8.
3. The road transport tariff is expressed in an amount in USD per cubic metre of water.

#### Explanatory notes

The road transport tariff includes the costs that are incurred for the distribution of drinking water by way of tank lorry, and is increased with the total production price for drinking water. Since consumers who receive drinking water by way of a tank lorry are not connected to the network, they do not pay a fixed consumption tariff, and therefore do not pay the production price which is independent of consumption. The tariff is expressed in an amount in USD per cubic metre.

### Chapter 4. Special stipulations concerning electricity and drinking water

#### § 4.1 Consumers who feed-in renewable electricity to the network

##### Article 4.1

1. For consumers with a connection less than  $3 \times 36A$ , who feed renewable electricity into the network, the distributor calculates the meter reading for the purpose of invoicing and collection of the variable consumption tariff, by reducing the electricity pulled from the network by the amount of electricity fed into the network.

2. If the amount of electricity fed into the network in a calendar year exceeds the electricity pulled from the network, the consumer will not receive compensation for the additional electricity intended in the first section.

#### Explanatory notes

This article relates to the set off between the amount of electricity which is fed into the network by small-scale consumers (those consumers with a connection that has a feed through value less than 3\*36A) and the amount of electricity pulled from the network. Consumers are able to net off their consumption. It must be remarked, in this case, that the set off involves that which takes place at one connection, because the term consumer refers to that which is physically taking place behind the connection and not to the legal entity, for example, a natural person or legal person, connected to the network. The natural person or legal person can therefore not set off the consumption and production at their various connections with one another. The netting off is expressed in the annual invoicing for the variable consumption tariff.

The second section stipulates that the distributor does not compensate for the net amount of renewable electricity fed into the network by the small-scale consumer. It is anticipated, for this purpose, that consumers dimension their installed capacity for own consumption.

#### Article 4.2

1. For consumers with a connection greater than or equal to  $3 * 36A$ , who feed renewable electricity into the network, the distributor invoices and collects the variable consumption tariff based on the electricity pulled from the network.
2. For the electricity fed into the network, an arrangement can be made between the distributor and the consumer with regard to a feed-in tariff, which amounts to at least zero USD per kWh and no more than the variable consumption tariff, intended in Article 3.13, second section, under c.
3. If the amount of electricity fed into the network in a calendar year exceeds the electricity pulled from the network, the consumer will not receive compensation for the additional electricity intended in the first section.
4. The distributor is, in addition to Article 3.6, first section, under b and c, charged with the task of installing a metering device at the consumer's location, as intended in the first section, chargeable to the consumer, to display the actual electricity consumption and the information with regard to the times when it truly involves consumption or feeding in.

#### Explanatory notes

The netting off arrangement in 4.1, first section, does not apply for large-scale consumers (those consumers with a connection that has a feed through value greater than or equal to 3\*36A). Large-scale consumers pay the variable consumption tariff for the electricity pulled from the network, in addition to the fixed consumption tariff (capacity tariff). These consumers receive compensation for electricity fed into the network, established after negotiation with the distributor. This compensation may amount to at least 0 USD (no compensation) and to no more than the variable consumption tariff - the equivalent of netting off. Even in the event that the feed-in tariff is established at 0 USD, it may still be profitable for the large-scale consumer to generate renewable electricity. This is true if, at the time when the electricity is generated, the consumption is at least equal to the generated electricity. If the consumer's overall consumption is less than what is generated by them, the distributor does not pay for the extra electricity generated. The fourth section of this article stipulates that, if a large-scale consumer wants to generate renewable electricity, the distributor must install a meter that can register feed-in and consumption separately, at the large-scale user's expense. Such a meter is necessary for implementation of the first and second section.

#### § 4.2 Cisterns

#### Article 4.3

1. Those individuals who do not consume drinking water from a drinking water network may establish, manage and utilise a facility for collection of water for own consumption, intended for drinking, cooking or for the preparation of food.

2. The facility and the water to be supplied by the facility comply with the rules imposed under or by virtue of Governmental decree. These rules do, at the least, provide for:
  - a. minimum quality requirements;
  - b. measures to prevent or limit the contamination of water;
  - c. technical requirements for the facility;
  - d. instructions with regard to use and maintenance; and
  - e. an obligation to report on the part of the owner or operator of the facility.

#### Explanatory notes

This article governs the personal drinking water supply of households. Specifically on Saba, but also on some parts of Sint Eustatius and Bonaire, households collect rainwater in a cistern below their homes. The collected rainwater is used for drinking water, amongst other things. This is an important part of the water supply in areas where a drinking water network is not in place. Further requirements are imposed, however, on the facility and the actual drinking water. This involves the installation of a filter and proper covering of the water tank, to prevent the presence of micro-organisms and harmful substances in drinking water. The facility is explicitly intended for personal use and may not be operated for commercial purposes. In certain cases it will be necessary to impose custom requirements with regard to the cistern. This may be the case, for instance, if modification of a cistern is not possible due to the location or local circumstances. In that case, there is a chance that a customised solution may be offered.

#### § 4.3. Other stipulations

#### Article 4.4

Under or by virtue of Governmental decree, rules are imposed with regard to a consumer's installation for drinking water.

#### Explanatory notes

In this article, a delegation basis is proposed, to set rules with regard to the consumer's installation for drinking water. In this case it involves the connected entirety of pipes, fittings and meters for the distribution of drinking water within a building, or several buildings located in the immediate vicinity of one another, and that are connected to one another with that pipeline network, which forms the connection between an individual water facility, a drinking water network or other connected tap points. In reality, this relates to pipes within homes, camping sites or hotels (consisting of multiple buildings). It is important that this internal installation does not pose any risk to public health, as a result of, for example, the choice of material or the condition of upkeep, but also that metering installations are in proper working order. Finally, the third section governs that custom requirements may be imposed with regard to the consumer's installation.

#### Chapter 5. Subsidisation

#### Article 5.1

1. Our Minister may, per financial year, grant a subsidy to an appointed distributor, intended in Article 3.2, with the goal to cover part of the costs that are discounted in the fixed consumption tariff and the road transport tariff, in order to reduce the tariffs that are charged to consumers.
2. In the subsidy decision, rules are imposed with regard to:
  - a. the subsidy amount or the manner in which the subsidy is determined;
  - b. the conditions under which the subsidy is granted;
  - c. the obligations for the subsidy recipient;
  - d. the payment of the subsidy and the issuing of advance payments;
  - e. establishing the subsidy;
  - f. revocation and amendment of the establishment or award of the subsidy;
  - g. the phasing out and evaluation of the subsidy.
3. Section 4.2.8. of the General Administrative Law Act is correspondingly applicable.

#### Explanatory notes

This article provides the basis for the granting of subsidies to distributors on the islands, as indicated in the general section of the Explanatory Memorandum. The goal of the subsidy is to mitigate the costs that are discounted in the tariffs. The value of the subsidy will be determined in the decision annually, as well as the manner in which the subsidy will be implemented. The subsidy is reduced over time. In the first 5 years the subsidy amount will be decreased by 10% each time, after which the subsidy instrument will be evaluated.

## Chapter 6. Supervision and enforcement

### § 1. Powers of Our Minister

#### Article 6.1

1. If Our Minister ascertains that a producer or distributor is unable to perform its tasks or to observe its obligations, Our Minister may charge the producer or the distributor with the task of making provisions or taking measures, including ceasing the production or distribution.
2. Our Minister is authorised to implement an order under administrative enforcement, for upholding a contract, as intended in the first section.
3. Our Minister may, in the interest of an uninterrupted drinking water supply and in the interest of public health, supply facilities, resources and assistance, whether entirely or in part, necessary for the implementation of that stipulated under or by virtue of this Act.
4. Our Minister may request the details and information from a producer, distributor or consumer, needed for execution of the stipulations imposed under or by virtue of the Act.

#### Explanatory notes

This article governs the Minister's powers in the event of problems with the production or distribution of electricity or drinking water. The first and second section propose to grant the Minister powers to move a producer or distributor to work on a rapid and proper solution in the event of failure to observe the obligations stemming from this Act. Included hereunder is the power to temporarily suspend the drinking water supply, should the drinking water not comply with the minimum requirements. In the event that supply is halted, or if it involves force majeure (such as a pipeline leak), for instance, the Minister of Infrastructure and the Environment may, pursuant to the fourth section, take provisions to have drinking water transported to the relevant island. With the above mentioned it is important that the producer and distributor have contact with the Minister concerning the nature and duration of the problems. For this reason, the fifth section governs the distributor or producer's obligation to provide this information to the Minister, if required.

#### Article 6.2

Our Minister sends to the Executive Council, intended in Article 36 of the Public bodies Bonaire, Sint Eustatius and Saba Act, to whom it concerns, a copy of:

- a. the appointment, intended in Article 3.2, first section;
- b. a decision as intended in Article 6.1, second section, or revocation of such a decision;
- c. a decision, as intended in Article 6.1, third section;
- d. a decision to revoke an appointment as intended in Article 2.2, fourth section, or 3.2, fourth section.

#### Explanatory notes

Further rules are provided in this article, concerning the forwarding of a copy of the decision to impose an order under administrative enforcement, to impose an order under pain of penalty, or to revoke such decisions, or the decision to revoke appointment of a producer or distributor, or to halt the supply of drinking water in connection with a risk to public health, to the relevant Executive Council.

### § 2. Powers of the Authority for Consumers and Markets

#### Article 6.3

1. The Authority for Consumers and Markets is charged with tasks for implementation of that stipulated under or by virtue of this Act.
2. Chapter 5 of the General Administrative Law Act is correspondingly applicable to the appointed civil servants, intended in the first section, on the understanding that, in Article 5.16a of the first mentioned Act on 'proof of identity, as intended in Article 1 of the Compulsory Identification Act', the following is read: identity document as intended in Article 2 of the BES Compulsory Identification Act.
3. The Authority for Consumers and Markets can, in the event of violation of that stipulated under or by virtue of this Act, impose an order under administrative enforcement, or an order under pain of penalty.
4. The Authority for Consumers and Markets may, in the event of violation of that stipulated under or by virtue of Articles 2.1, 2.3, 3.1, 3.6, 3.7, 3.8, 3.9, 3.13, 4.1 and 4.2, impose an administrative fine, per violation, of no more than USD 100 000.

#### Explanatory notes

This article governs the powers of the ACM. These powers encompass economic regulation of the tariffs, the financial system and financial reporting of appointed producers or distributors of electricity or drinking water. Supervision and enforcement is impossible without a proper set of instruments. Even though the point of departure of Article 3 of the Act establishing BES is to declare as little of the General Administrative Law Act (Algemene wet bestuursrecht, Awb) applicable, as possible, in this article, Chapter 5 is declared applicable. As noted before, Netherlands Antillean law does not have any general rules on this level, contrary to the General Administrative Law Act. It is more functional to declare Chapter 5 applicable, than to write out the stipulations for this specific situation. This also entails that the ACM works in accordance with the procedures of the General Administrative Law Act. It would therefore be illogical to establish a new system of supervision and enforcement in this Act, whilst a usable and feasible system is already available. The regulations with regard to supervision of the observance, administrative enforcement and penalty from the General Administrative Law Act are therefore declared applicable to the ACM. Moreover, it is also noted that an administrative authority may, pursuant to Article 5:31 of the General Administrative Law Act, in urgent situations, decide that administrative enforcement be implemented without an order. If the situation is urgent, direct administrative enforcement may be implemented, but will be announced as soon as possible after the relevant decision.

#### Article 6.4

1. A consumer with a dispute concerning a distributor, in terms of the manner in which the distributor performs its tasks and powers, pursuant to this Act, or observance of its obligations pursuant to this Act, may, in the event that the complaints procedure intended in Article 3.11 has been followed, file a complaint with the Authority for Consumers and Markets.
2. The Authority for Consumers and Markets will decide on a complaint within two months after receipt of the complaint. The Authority for Consumers and Markets may extend this period with two months, should it require additional information from the complainant or from the distributor. If the complainant agrees, further extension will be possible.
3. The Authority for Consumers and Markets' decision is binding.
4. Filing a complaint, intended in the first section, does not affect the relevant party's options for a legal remedy.

#### Explanatory notes

Article 6.4 provides an arrangement for settlement of disputes between consumers and the distributor, in terms of the manner in which the distributor performs its statutory tasks or observes its statutory obligations. This arrangement entails, in short, that a party with a dispute may file a complaint with the ACM, but, should it involve a complaint concerning a distributor, only after the complaints procedure has been followed with the distributor. The ACM makes a decision on the complaint within two months. In order to acquire information, the ACM may furthermore extend the term once-off, with no more than two months; further extension is only possible with the complainant's permission. The ACM's decision is binding. This legal binding character implies that it involves a decision in the sense of Article 1:3, first section, of the General Administrative Law Act

(Awb), which is susceptible to objection and appeal. The fourth section stipulates that filing a complaint will not hamper the complainer from making use of any other legal remedy at their disposal, such as submitting a claim against the distributor to the court.

### § 3. Powers of the technical supervisory body

#### Article 6.5

1. Civil servants appointed by decision of Our Minister are charged with supervision of the observance of that stipulated with regard to quality and safety under or by virtue of Articles 2.3, 3.6, 3.8, 3.9, 3.10, 4.3 and 4.4.
2. For civil servants appointed by virtue of the first section, falling under the public body Bonaire, Sint Eustatius or Saba, rules concerning the fulfilment of their task intended in the first section, are not imposed in a way other than in accordance with the relevant public body.
3. Our Minister may, in the event of violation of that stipulated under or by virtue of Articles 2.3, 3.6, 3.8, 3.9, 3.10, 4.3 and 4.4, impose an order under administrative enforcement, and order under pain of penalty, or an administrative fine per violation, not exceeding USD 14 000.
4. Article 6.2, fourth section, is applicable to the appointed civil servants intended in the first section.
5. The civil servants appointed by virtue of the first section are authorised, for fulfilment of their task, to take along the necessary equipment, to enter a residence or part of a vessel intended as a residence, without the resident's permission. Title 4 of the Third Book of the BES Code of Criminal Procedure is correspondingly applicable to the entry, with the exception of Articles 155, fourth section, 156, second section, 157, second and third section, 158, first section, last full sentence, and 160, first section, and on the understanding that authorisation is granted by the person in charge.
6. A decision, as intended in the first section, is announced by way of publishing it in the Government Gazette.

#### Explanatory notes

This article governs the Minister's supervisory powers, with regard to the quality and safety of the supply of drinking water or electricity. It involves enforcement in terms of the requirements for the quality of installations, networks and products.

In this article, Chapter 5 of the General Administrative Law Act is also declared correspondingly applicable, and the Minister is able to implement administrative enforcement or order under pain of penalty. The supervisory powers of the supervisory body are listed in Article 5:15 through 5:19 of the General Administrative Law Act. This article supplements these stipulations, should the supervisory body wish to enter a residence to inspect the installation of a consumer, in the event of alleged dangers and risks. Entering a residence is a drastic power which could violate the privacy of the relevant individual. A formal legal basis is therefore necessary.

Our Minister will appoint civil servants from the Human Environment and Transport Inspectorate (ILT) as members of the supervisory body. Furthermore, it is also possible to appoint civil servants from the public body, with permission.

### § 4. Coordination of enforcement

#### Article 6.6

1. Our Minister may prepare an enforcement plan in which it is indicated, with motivation, which goals are set by the Minister, for the Minister, in terms of enforcement, which activities the Minister will perform for this purpose, and which arrangements were made with other relevant bodies responsible for enforcement. The Authority for Consumers and Markets' Executive Council is consulted during the enforcement policy's preparatory phase.
2. Our Minister makes an enforcement plan, intended in the first section, available for inspection.

#### Explanatory notes

Article 6.6 forms the legal basis for the preparation of an enforcement plan. The plan describes the strategic, programmatic and mutually coordinated execution of the enforcement powers and

supervision of observance. In order to achieve effective and efficient enforcement and supervision, it is important that coordination takes place between the administrative bodies charged therewith. Regular consultation between the involved administrative bodies is necessary for preparation and implementation of arrangements by all authorities involved in the enforcement and supervision. For these reasons it is established that the involved Executive Council and the Authority for Consumers and Markets be consulted in the establishment of the enforcement plan.

## Chapter 7. Transitory and final stipulations

### Article 7.1

In the BES Criminal Code, Articles 178 and 179 read:

#### Article 178

He who purposefully and unlawfully introduces a substance into a structure for the supply of drinking water, or into a pipe intended for joint use of or with others, or who hampers the production of drinking water or the supply of drinking water from the public drinking water facility will be punished:

1°. with imprisonment of twelve years, at most, or a fine in the fifth category, if, as a result, danger for another is feared;

2°. with imprisonment of fifteen years, at most, or a fine in the fifth category, if, as a result, danger for another is feared and if the fact results in a death.

2. He who purposefully destroys, damages or causes any work intended for the public drinking water supply to be useless, or causes a disruption in the progress or function of such work, or opposes any safety measures taken in terms of such work, will, if an impediment or aggravation of the public drinking water supply is feared, be punished with imprisonment of one year, at most, or a fine in the fourth category.

#### Article 179

He who is responsible for the unlawful introduction of a substance into a structure for the supply of drinking water or into a pipe intended for joint use of or with others, will be punished:

1°. with imprisonment of one year, at most, or a fine in the fourth category, if, as a result, danger for public health or peril for the life of another, is feared;

2°. with imprisonment of two years, at most, or a fine in the fourth category, if, as a result, peril of the life of another is feared and if the fact results in a death.

2. He who purposefully destroys, damages or causes any work intended for the public drinking water supply to be useless, or causes a disruption in the progress or function of such work, or opposes any safety measures taken in terms of such work, will, if an impediment or aggravation of the public drinking water supply is feared, be punished with imprisonment of six months, at most, or a fine in the fourth category.

#### Explanatory notes

In Article 7.1, the stipulations from the BES Criminal Code, relating to the contamination of springs, pumps and wells, are included. It is recommended that the equivalent stipulations from the European Netherlands Criminal Code be included, written for the situation with a public drinking water network, but which will also suffice, should it involve a personal drinking water supply (cistern). Furthermore, a stipulation such as that included in Article 40, second section of the BES Drinking Water Act, is then no longer necessary.

### Article 7.2

In addition to Article 3.15, second section, the fixed consumption tariff is also charged for a period of five years after shut-off, to consumers with a connection greater than or equal to 3 \* 36A, who had a connection to the network on 1 January 2013, and which was shut-off after this date, upon their request, in order to supply their own electricity or drinking water.

#### Explanatory notes

This article governs that larger consumers who had an initial connection to the network, but then requested to be shut-off from the electricity network or drinking water network, in order to provide their own production / generation, are still obligated to pay the fixed consumption tariff for a period of five years. The costs that are discounted in this tariff for the relevant consumers, have, after all, been incurred: the capital expenses for the central production installations continue to be incurred, the networks were dimensioned based on the consumption. The date 1 January 2013 was chosen, because, at that time, the main lines of the regulation were in place, on account of the letter of 17 December 2012 to the Chairman of the Second Chamber (Chamber documents II 2012/13, 31 568 no 125).

#### Article 7.3

Distributors who do not comply with the requirement, intended in Article 3.5, second section, at the time when the Act enters into force, will comply with the relevant requirement within three years after the time when it enters into force.

#### Article 7.4

The BES Electricity Concessions Act and the BES Drinking Water Act are revoked.

#### Article 7.5

The articles for this Act enter into force at a point in time to be determined by royal decree, which can be established differently for the different articles or components.

#### Article 7.6

This Act is quoted as: BES Electricity and Drinking Water Act.

[We] Require and command that this will be placed in the Official Bulletin of Acts and Decrees and that all ministries, authorities, councils and civil servants, whom it concerns, will diligently implement it.

Given,

The Minister of Economic Affairs,

The Minister of Infrastructure and the Environment,