



Ministerie van Infrastructuur en Waterstaat
Att: [REDACTED]
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2500 EX Den Haag
Nederland

Per email: [REDACTED]
[REDACTED]

St. Eustatius, December 1 2020

Subject: Joint response to proposal to amend the Drinkwater and Electricity Act BES

Dear Mr. [REDACTED]

The following is a consolidated response to the proposed changes in the Drinkwater and Electricity Act BES. On behalf of the signatories STUCO, CDS and OLE. Considering the commonality in subject matter and priority in areas of concern the above party in mutual consultation submits the following reaction for your consideration. The reaction will address the draft law and highlight the concerns article by article. The main focus of reactions is the realistic ability of the local utility company to provide reliable and affordable Electricity and Potable water to the community of St. Eustatius. Party share the option that legislation should not create an unrealistic environment where the provision of the basic services are jeopardized. Secondly, the adjustment of the legislation should not create the environment which results in unbearable increase in cost to the consumer. Given the current and yet projected negative impact of the current pandemic on the fragile economies of the Island the financial impact of changing legislation must serve as leading criteria.

The following is an article by article reaction to proposed amendments:

C: In artikel 3.2, vierde lid, wordt "rechtspersoon" vervangen door "natuurlijke of rechtspersoon".

Electricity and Drinkwater BES Act chapter 3: Distribution of electricity and water

With this change the possibility is created for 3rd parties to also deliver water



- A. Currently STUCO is the only entity authorized to deliver drinking water by truck and is constrained in times of crises by the limitation of having just one truck on hand
- B. In this manner the Minister can also appoint 3rd parties to deliver by truck as well; this in principle does not have any impact on STUCO in the business sense, but can be an added benefit for the community, since in times of drought citizens who are not part of the STUCO water grid and who normally do not ask for trucked water, also add to the demand for trucked water, since it is customary to see a significant increase for trucked in times of drought; therefore this change can be seen as beneficial for the community of Statia, should a third party be able to find a business case to deliver drinking water safely to citizens in times of drought

D: Artikel 3.5 wordt als volgt gewijzigd:

1. In het eerste lid vervalt onderdeel f, onder toevoeging van "en" aan het slot van onderdeel d en onder vervanging van "en" aan het slot van onderdeel e door een punt.

- A. No comment on this change

2. Aan het tweede lid wordt onder vervanging van de punt aan het slot van onderdeel c door "; en" een onderdeel toegevoegd, luidende:

d. bij uitval van de drinkwatervoorziening zorg te dragen voor het binnen 24 uur leveren van drinkwater van een hoeveelheid die op dagbasis ten minste 75% bedraagt van de hoeveelheid die wordt geleverd op de dag in het kalenderjaar waarop het drinkwaterverbruik op etmaalbasis het hoogst is.

With this change the requirement to have minimum 7 days of water on hand for the entire island is eliminated; this could present a risk for the surety of water for the island, since some assurance for the availability of drinking water to the public was encompassed by this requirement and at the same time assuming that the company would have most likely been able to return to normal operations within this period, from the position that St. Eustatius is an island and cannot rely on another source for drinking water since there is but one drinking water company on the island, STUCO.

- A. In the first instance the law is not clear if the 75% is related to the overall daily peak-demand for water in for the entire island or is related to 75% per district. This needs to be clarified.
- B. Assuming the first situation in "A" above, then 75% implies though that for the entire island at least 18 hours per day water should be available at all times and can in fact continue for an extensive period.



- C. This could be achieved by sufficient storage, however, this change implies that the company can disregard the safety of a 7 days storage simply to comply with the law, this is a risk for the surety of water for the consumers
- D. 1. Should this change be meant per district, then this poses a risk that STUCO would not be able to comply with, since the entire STUCO water grid, unlike the electricity grid, is a radial grid and depending on the water grid fault, and the prevailing situation on the island at the time, weather etc., the company would not be able to comply with this 75%; therefore an exemption must be in place for STUCO
2. This aspect of compliance is not realistic as this would require significant investments in order to have redundancy of distributed supply in place for the districts and in my opinion not needed at this time as a priority; therefore an exemption of STUCO is required here
- E. Also, how is peak demand determined here for STUCO?? Since the peak-demand is actually in times of drought but is not made clear here for the specific situation on Statia and must be clarified
- F. In order to comply with this requirement then redundancy has to be in place from the production as well; as such in order to comply with this 75%, STUCO would have to make additional investments in water production in order to ensure redundancy of production for compliance; hence another reason to ask for an exemption in this case
- G. Lastly, the law should also contain a general article of exemption with respect to "Force Majeure", for instance for times of calamities such a hurricanes, major fire outbreak or other major disruption beyond control of the company; these are conditions generally not regarded as in the realm of normal operational and maintenance activities

Adoption of this article would in effect require STUCO to automatically request and exemption considering the radial network layout and lack of redundancy net issues would result in service interruption that are like to exceed the proposed legal benchmarks. Further the high demand during drought exacerbates this issue as demand spikes.

3. Aan het derde lid wordt onder vervanging van de punt aan het slot van onderdeel c door "; en" een onderdeel toegevoegd, luidende:
d. de maatregelen opneemt die hij neemt om aan de verplichting, bedoeld in het tweede lid, aanhef en onder d, te kunnen voldoen.

With regards to this article, rightfully so the risks and gaps are required to be identified in order to determine the investments needed to comply with the conditions named; however, most likely considering the sure absence of a positive business case for STUCO, there leaves no other but to in the first instance ask for an exemption and seek support from the responsible Ministry in order to put the water infrastructure in place in order to duly comply; **this is an action that would take**



years to realize, if the law is to be literally complied with in addition it is recommend that an evaluation of the investments needed to mitigate this risk be executed.

E: Aan artikel 3.13 wordt een lid toegevoegd, luidende:

3. Bij of krachtens algemene maatregel van bestuur kunnen in het belang van de volksgezondheid installaties als bedoeld in het tweede lid worden aangewezen waarop een of meer van de bij of krachtens artikel 2.3, tweede lid, gestelde eisen bij die maatregel van overeenkomstige toepassing worden verklaard.

No comment here as this article in my opinion relates to 3rd parties such as hotels, hospitals etc, who has an internal water distribution grid...I believe examples should be elaborated of what type(s) of installations are meant here in order for the law to be sufficient clear

F: In artikel 3.14, vierde lid, wordt voor "een redelijk rendement" ingevoegd "het derde lid," en voor "de subsidie" vervalt "met inachtneming van".

No immediate reaction to this article here

G: Artikel 3.15, vierde lid, vervalt.

I believe this is an oversight since the approach has always been, in my now 29 years on the job, and having been back for 26 years on the island, to duly compensate proportionately the customer who has first paid for the grid and subsequent participating customers to the same extension proportionately; I also question if this is actually legal since one customer without an opportunity for restitution or compensation could end up financing the extension for a third party/others at no cost to them, while bearing the full costs for the extension alone, being the first one to be serviced from said extension

My suggestion is that this article should remain, however with a limitation as has been the case in my 19 years as manager of GEBE-Statia prior to the split-up of GEBE, and which has worked without incident or hiccup; that, the first customer pays for the extension as stated and for any other customers joining within the 5 year period after the extension has been paid for, shall be compensated proportionately as well as subsequent customers within that first 5 year period. After the 5 year period the line is freed and no-one is anymore considered for further compensation.



A further major point of concern, especially related to water in a developing island/country such as Statia is that clean, safe, drinking water should be available to all citizens as a right; one argument brought forth by the OLE is the position that the customer should not have to pay for infrastructure of the utility, a position I can understand, especially in the case of water; as such a position should be taken in the law with respect to the first right of the customer to the access of safe drinking water

The question is, how is this regulated in the Netherlands? Is the same methodology used for the Caribbean Netherlands?

H: Artikel 3.16 wordt als volgt gewijzigd:

1. Het derde lid komt te luiden:

3. De hoogte van het vaste gebruikstarief wordt berekend per aansluiting en wordt uitgedrukt in een vast bedrag in USD, en is, voor elektriciteit, afhankelijk van de grootte van de aansluitcapaciteit.

2. Het vierde lid komt te luiden:

4. Voor afnemers, behorende tot een bij regeling van Onze Minister aangewezen categorie, kan een lager vast gebruikstarief worden vastgesteld overeenkomstig daarbij gestelde regels. Bij ministeriële regeling kan worden bepaald dat voor afnemers van elektriciteit met een lage aansluitcapaciteit een korting wordt gegeven op het vaste gebruikstarief, waarbij in de regeling het kortingspercentage wordt vastgesteld.

No comment here as this benefits the consumer, except for the fact that the law should also have continued that the difference in the tariff set by the ACM for these lower tariff groups and this reduced tariff set by the Minister would be compensated fully by a subsidy; should this not be the case then STUCO, in collaboration with the tasks of ACM, the regulator, would have no choice than to increase the tariffs for the other customers in order to compensate for the loss of income to these lower tariff groups; in this way the tariffs for many shall increase unduly, surely for all businesses on the island, who in fact then shall be subsidizing the costs of others, while incurring more operational expenses, resulting in a less competitive position, such as hotels etc, and as such having to raise their sale prices, such as supermarkets and so increase the cost of living on the island; this then would be fully in contravention to the goal of having to decrease and contain the cost of living on an already very expensive island, where the cost of living is already known to be disproportionately high as compared to the Netherlands, while the incomes as disproportionately low!

This action then would defeat all efforts to contain the cost of living since:

- A. Should the full subsidies for these lower consuming groups not be fully subsidized, then the difference would have to come from the community and result in the increase of the cost of living as mentioned



- B. The lower tariffs set would be for not and the impact declared nill since the targeted customer in the lower consuming groups as all other customers would be faced with the increased cost of living The effect here is both for electricity as it is for water and as such should be of much concern for the customer watchdog bodies/entities on the island A solution must be found and as such to maintain the subsidies for the lower consuming groups for electricity and also to ensure that the water tariffs for the entire island are affordable Consumer groups should then require a determination for the affordability of water and electricity on the island and establish a means to maintain said determination; only then with said basis can the economy have a basic pricing platform on which to chart forward I dare say, in order to remain realistic, as has always been, in recognition of the region in which we live and given that historically electricity pricing was tied to and identical to the rates on St. Maarten, that for the pricing or tariffs for electricity and water on Statia, St. Maarten should be used as a reference.

Aan hoofdstuk 3 wordt een artikel toegevoegd, luidende:

Artikel 3.19

Indien niet wordt voldaan aan het met betrekking tot de tarieven voor drinkwater bij of krachtens deze paragraaf bepaalde kan Onze Minister van Infrastructuur en Waterstaat een aanwijzing geven aan de distributeur. Bij de aanwijzing wordt aangegeven op welke gronden niet wordt voldaan aan het bepaalde bij of krachtens deze paragraaf en welke wijzigingen met het oog daarop in het tarief of de tarieven vereist zijn. Bij de aanwijzing wordt een termijn gesteld waarbinnen aan de aanwijzing voldaan moet worden.

With respect to this article, see my statement mentioned above since:

1. The ACM has to set cost-based tariffs, based on the law and the international method for tariff setting to be used
2. STUCO then cannot be expected to subsidize its own customers, simply impossible as the company cannot run itself in the ground as no responsible management would allow, nor would the auditors ever agree to this
3. The Ministry can set tariffs for certain consumer groups as indicated by the change to the law
4. Considering the above then, then the Ministry would have to at the same time provide the equitable compensation to off-set the decreased tariff
5. In reference to the cost based tariffs set by the ACM for all consumer groups, then STUCO cannot require any particular group to pay more than its proportionate share or then in fact certain groups would be then subsidizing the other; this is especially true for the manner in which the fixed cost tariff is being determined
6. For the variable tariff the company can in fact set escalating tariffs based on blocks of consumption, this is in fact a common practice; however, this same approach cannot be taken in the case of setting the fixed cost tariff and in being non-discriminative as the law



- indicates, no subsidies should take place amongst various consumer groups, hence the Ministry should provide the full subsidies for the specific target groups identified for a lower tariff setting by the Ministry, as has been determined by the ACM, the regulator
7. Care must be taken that subsidies from the Ministries are not decreased to the intended vulnerable groups, with the intent then to be compensated by (the) other consumer groups
 8. As indicated earlier, an elaboration or additional information should be provided as to how these tariffs are comprised in the Netherlands as a reference...without (a) reference(s) in this case for electricity and water tariffs, then one cannot have a true orientation of the specific situation for the consumers on Statia

Chapter 6: Oversight and enforcement

M: Artikel 6.13, eerste lid, komt te luiden:

1. *Onze Minister van Infrastructuur en Waterstaat kan tijdelijk ontheffing verlenen van:*
 - a. *de kwaliteitseisen voor stoffen, bedoeld in artikel 2.3, tweede lid, onder a, voor zover dit geen gevaar voor de volksgezondheid oplevert; en*
 - b. *artikel 3.5, tweede lid, onderdeel d, als naleving hiervan redelijkerwijs niet mogelijk is.*

As remarked earlier, STUCO would have no other choice, seeing the specific situation of the state of the water infrastructure on the island at this present moment, with a view towards the capacity and configuration of its production, transport and distribution system with the unique presence of cisterns and the resulting impact of droughts, to at this moment request and exemption until certain critical investments are made, to reliably comply with the literal intentions of the law as described here.

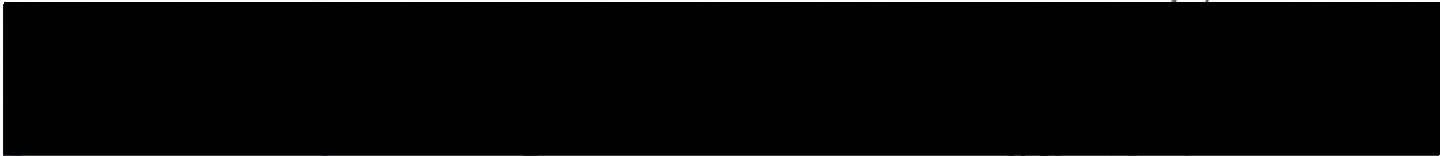
The Island specific circumstances will remain an important discussion point when it comes to enforcement.

The above remark summarizes the reaction to the draft law which is submitted for your consideration. The signatories would further like to bring the following concerns to your attention. Given the importance of the input of stakeholders of public entity to critical legislation sufficient time (minimal 4 months) should be granted in order to properly study, analyze and respond to legislative and or policy proposals for consideration. In addition, considering English is an officially established and widely used primary language courtesy translations or summary excerpts should be provided in order for the stakeholders to efficiently process and react to submitted proposals.



As stakeholder we value the opportunity to provide input on behalf of the community of St. Eustatius and are available to explain our reactions in further detail should this be required. We thank you for your attention to the points presented and look forward to working with you in implementing the new legislation in the interest of our respective communities.

Hoping to have informed you sufficiently,



PUBLIC ENTITY ST. EUSTATIUS

CENTRAL DIALOUGUE STATIA

STUCO