

# Regulation of electricity and gas network tariffs for 2022 to 2026

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## Tariff regulation State of play

In accordance with the European legal framework, the electricity and gas network tariffs in the Netherlands are set by the national regulatory authority, the [Authority for Consumers and Markets \(ACM\)](#). The Electricity Act 1998 and the Gas Act provide for regulatory periods for the national transmission system operators (TSOs) for electricity and gas, TenneT and Gasunie Transport Services (GTS), respectively, and for the regional distribution system operators (DSOs) for electricity and gas (eg, Liander, Enexis and Stedin).

### Tariff regulation

The Electricity Act and the Gas Act provide for a form of regulation whereby the ACM determines the allowed revenues for the various system operators based on the efficient costs of these companies, including a reasonable return (in the form of the weighted average cost of capital (WACC) on the basis of a capital asset pricing model). The efficient operational costs are determined based on a benchmark; for the TSOs, this is an international benchmark and for the DSOs, the benchmark is based on the average costs per output for the whole distribution sector. The methodology is set out in [three types](#) of decision taken by the ACM:

- First, the ACM publishes method decisions for the whole regulatory period, which is now prescribed as a minimum period of three years and a maximum period of five years (ie, one method decision for all electricity DSOs).
- Second, the ACM publishes so-called 'x-factor' decisions that provide for each system operator the path from the allowed revenues from the beginning to the end of the regulatory period, considering the respective method decision.
- Third, the ACM publishes annual tariffs decisions for each system operator.

In the new Energy Act, which will replace and integrate the existing Electricity Act and Gas Act and for which a draft bill was presented for consultation, the system of method decisions and annual tariff decisions by the ACM will continue (but the x-factor decisions will disappear) and the regulatory periods will be no less than three years and no more than six years (instead of the current five years). As a general rule, the method decisions are published no more than six months before the beginning of a new regulatory period. Before that, drafts of the various method decisions will be published and interested parties will have six weeks to submit their opinions on the drafts. The ACM's reactions to these opinions are part of the final method decisions. The method decisions can be appealed before the Administrative Court of Appeal for Trade and Industry. A party that has not submitted an opinion on the draft method decision generally cannot appeal the final method decision. The practice of method decisions and the Administrative Court of Appeal for Trade and Industry judgments form a large and well-established [body of case law and jurisprudence](#).

### State of play

A lot of activity is currently taking place around the method decisions for the regulatory period of 2022 to 2026. The draft method decision for 2022 to 2026 for GTS was published on 31 August 2020 with the final method decision published on 1 February 2021. This was especially early because of the new European consultation and reporting obligations pursuant to EU Regulation 2017/460 establishing a network code on harmonised transmission tariff structures for gas (better known as "TAR NC"). The draft method decisions for TenneT and the electricity and gas DSOs were published on 19 April 2021, giving interested parties until 31 May 2021 to submit their opinions. A key new element in the method decision of GTS and the draft method decisions for the DSOs is that the ACM is allowing the system operators to charge network costs earlier than before by means of degressive depreciation (instead of linear depreciation). This allows for the application of a nominal WACC instead of a real WACC (the WACC corrected for expected inflation). The [reason for earlier](#)

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**recoupment** of investment costs is the anticipated contraction in the demand for natural gas due to the energy transition. The draft method decision for GTS has attracted opinions from, among others, large users of GTS transport services, which have subsequently appealed the final method decisions before the Administrative Court of Appeal for Trade and Industry because the ACM upheld the contested methodology. In April 2021 the court decided that, due to the potential overlap of the appeal grounds and the various method decisions for 2022 to 2026, the appeals against the GTS method decision will be dealt with in parallel with the anticipated appeals against the method decisions of TenneT and the DSOs.

On 31 May 2021, among other things, the representative organisation Netbeheer Nederland submitted an opinion on the draft method decisions for the electricity and gas DSO's, arguing for a significantly higher WACC.<sup>(1)</sup> For electricity, in April 2021 the consultancy firm Strategy&/PwC published a report commissioned by Netbeheer Nederland showing that until 2050, investments of more than €100 billion in the electricity grids are needed.<sup>(2)</sup> In view of these enormous investments needed in the electricity grids at a time where the proposed WACC is exceptionally low, TenneT and the electricity DSO's have also argued that earlier recoupment of efficient investment costs through the application of a nominal WACC instead of the continued application of a real WACC would partly alleviate their financing problem. In any event, the impact of the energy transition will also lead to interesting additions to the already substantial pile of case law on tariff regulation in the Netherlands.

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## **Endnotes**

(1) These opinions, including the economic reports, are available [here](#) (in Dutch).

(2) The report is available [here](#) (in Dutch).

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