

GD29 TREATMENT OF CORPORATION TAX CALL FOR EVIDENCE

19 NOVEMBER 2025

About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Millennium House in the centre of Belfast. The Chief Executive and two Executive Directors lead teams in each of the main functional areas in the organisation: CEO Office; Price Controls; Networks and Energy Futures; and Markets and Consumer Protection and Enforcement. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.

OUR MISSION

To protect the short and long-term interests of consumers of electricity, gas and water.

OUR VISION

To ensure value and sustainability in energy and water.

OUR VALUES

ACCOUNTABLE:

We take ownership of our actions.

TRANSPARENT:

Ensuring trust through openness and honesty.

COLLABORATIVE:

Connecting and working with others for a shared purpose.

DILIGENT:

Working with care and rigour.

RESPECTFUL:

Treating everyone with dignity and fairness.

ABSTRACT

This document represents the first stage in a process to review the treatment of corporation tax as part of our regulatory framework for Phoenix Energy and Kinecx Energy. This paper is a call for evidence from which we will develop further options for consultation.

AUDIENCE

This document will be of interest to regulated companies, consumers bodies, Government departments and other statutory bodies.

CONSUMER IMPACT

The outcome of the treatment of tax review process will inform future gas distribution network price controls. The price controls will set allowances for the regulated gas distribution companies. These allowances are in turn recovered from Northern Ireland gas consumers.

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Purpose of this document

This Call for Evidence marks the first stage in the Utility Regulator's review of how corporation tax is treated within the regulatory framework for Phoenix Energy and Kinecx Energy. The review will inform the development of the next gas distribution network price control, GD29.

Currently, Phoenix Energy and Kinecx Energy receive corporation tax allowances through a pre-tax Weighted Average Cost of Capital (WACC) approach. This method provides an implicit allowance for tax liabilities within the cost of capital. However, many other regulated entities—including Evolve and utilities in Great Britain—are subject to a post-tax vanilla WACC approach, which separates tax allowances from the cost of capital and models them explicitly.

The Utility Regulator is assessing whether the historical approach to the treatment of corporation tax remains fit for purpose, particularly in light of:

- Increasing corporation tax liabilities that now exceed the implicit allowances.
- Concerns about financeability and credit ratings, especially for Phoenix Energy.
- The potential for consumers to pay twice if a transition to a post-tax approach is not carefully managed.

For the avoidance of doubt, there has been no suggestion, and there should be no question or perception, that Phoenix Energy and Kinecx Energy have not paid all appropriate historic corporation tax liabilities.

This document outlines the background, regulatory context, and preliminary options for how to proceed. Seven illustrative options are presented, ranging from retaining the current approach to transitioning to a post-tax WACC with various transitional adjustments to protect consumers and ensure fair treatment of historical allowances.

Stakeholders—including regulated companies, consumer bodies, and government departments—are invited to provide evidence and views on:

- Corporation tax historical allowances and corporation tax liabilities.
- The implications of changing the regulatory approach to corporation tax.
- Debt financeability metrics.

Responses will inform a further consultation in 2026, leading to a final policy position ahead of the GD29 price control determinations. Respondents can ask us

to treat responses as confidential. Where they consider this to be the case, they should specify why the information in question should be treated as such.

1. Background

- 1.1 The Utility Regulator's (UR)¹ principal objective in carrying out its gas functions is to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland.
- 1.2 In Northern Ireland the three gas distribution networks (GDNs) are natural monopolies, with each GDN providing the distribution network in separate defined areas:
- a) Phoenix Energy² owns and operates the Greater Belfast network
 - b) Kinecx Energy³ owns and operates the Ten Towns network
 - c) Evolve⁴ owns and operates the West network
- 1.3 While the GDNs' licences set some limits on exclusivity of areas served in principle, in practice there is no opportunity for consumers to change their distribution network provider. In these circumstances, economic regulation serves as a surrogate for competition, to challenge the GDNs to operate efficiently and maintain and improve the level of service received by consumers.
- 1.4 An important part of this regulatory framework is periodic price controls. A price control sets the maximum allowed revenue a GDN is allowed to recover from consumers through a cap on revenues (or cap on prices in Evolve's case). Through price controls, economic regulators provide regulatory allowances for the regulated company or companies, while at the same time setting out a framework for financeability.
- 1.5 The most recent price control review process for the GDNs was GD23, which set the price control for the six-year period from 1 January 2023. During this review process, Phoenix Energy and Kinecx Energy made representations on the future treatment of tax. We indicated in the GD23 Final Determination that we would complete further consultation on those companies' regulatory tax framework in advance of the GD29 price control.

¹ The terms "UR", "we" and "our" are used interchangeably in this document to refer to the Utility Regulator, the economic regulator for electricity, gas and water in Northern Ireland.

² Phoenix Energy were known as Phoenix Natural Gas Limited at the time of GD23 price control process. Throughout this document when we refer to Phoenix Energy we refer to all its corporate history.

³ Kinecx Energy were known as firmus Energy Distribution at the time of GD23 price control process. Throughout this document when we refer to Kinecx Energy we refer to all its corporate history.

⁴ Evolve were known as Scotia Gas Networks (SGN) Natural Gas Northern Ireland at the time of GD23 price control process. Throughout this document when we refer to Evolve we refer to all its corporate history.

- 1.6 The treatment of corporation tax in the regulatory model for Evolve utilises a different approach and is not being reviewed. We provide detailed information on the difference in the approaches in chapter 2.

2. Regulatory approaches to corporation tax

- 2.1 The price controls that we set for Northern Ireland's GDNs include an allowance to cover the corporation tax payments that each GDN makes to HMRC.
- 2.2 The general principle of neutrality should apply to taxation. In other words, price-controlled companies should be able to recover an appropriate allowance for the corporation tax they are required to pay.
- 2.3 When using a weighted average cost of capital (WACC) approach to the financeability of a regulated company, there are two main ways in which a regulator can provide an allowance for corporation tax:
- a) post-tax vanilla WACC
 - b) pre-tax WACC
- 2.4 The post-tax vanilla WACC approach models a company's expected corporation tax payments on an annual basis to calculate an annual tax allowance that reflects the expected cost in each and every 12-month period. This approach provides a separate allowance for tax *outside* of the calculated WACC.
- 2.5 The pre-tax WACC approach is a relatively simple tax wedge adjustment in the allowed cost of capital, in which the allowed return on equity is grossed up from a post-tax return on equity to a pre-tax return on equity. This approach provides an allowance for tax *within* the WACC. This entails using the formula:
- $$\text{pre-tax return on equity} = \text{post-tax return on equity} / (1 - t)$$
- where t is the marginal rate of corporation tax.
- 2.6 This tax wedge adjustment implicitly assumes that the return on equity building block in the UR's price control calculations, and only this building block, washes through into taxable profit. The gross up of the required return on equity then ensures that a firm that pays tax at corporation tax rate t on its profits, will have exactly the income that it requires to cover its tax payments and cover its cost of equity.⁵

⁵ If a firm's profit after interest is calculated as post-tax return on equity $/ (1 - t)$, the firm will pay tax of $t \times \text{post-tax return on equity} / (1 - t)$. The firm's profit after tax will be: $\text{post-tax return on equity} / (1 - t) - t \times \text{post-tax return on equity} / (1 - t) = (1 - t) \times \text{post-tax return on equity} / (1 - t) = \text{post-tax return on equity}$.

- 2.7 Both approaches are different ways for a price control framework to provide allowances for corporation tax that have been used previously in UK regulatory practice. However, the two approaches differ in two material ways:
- a) Complexity – a post-tax vanilla WACC allowance is more complex, in that it requires the UR to gather and model information about all of the various factors that HMRC includes in its tax calculations. The $1 / (1 - t)$ tax wedge adjustment, by comparison, is a much simpler allowance to implement.
 - b) Profile of revenues – a post-tax vanilla WACC allowance, by design, gives an annual match between revenues and costs. The pre-tax WACC method is also intended to match revenues to costs, but it does so over the life of a network rather than in any given 12-month period.
- 2.8 While being simpler, the implicit corporation tax allowance under the pre-tax WACC approach is a more approximate way to provide allowances for corporation tax under a price control. A feature of the pre-tax WACC approach is that there may be periods where the implicit corporation tax allowance in any one year is more than the corporation tax actually paid, and conversely, periods where the corporation tax allowance in a year is less than the corporation tax actually paid in that year.

Approaches to corporation tax in UR price controls

- 2.9 We use both post-tax and pre-tax WACC approaches to corporation tax in our price control work. In the latest set of GDN price controls, GD23, we set a pre-tax WACC allowance for Phoenix Energy and Kinecx Energy, and a post-tax vanilla WACC allowance for Evolve.
- 2.10 At Evolve's first price control review (GD17), we implemented a post-tax vanilla WACC approach. This decision reflected our commitment, made during the Gas to the West licence application process, to review the corporation tax treatment for the successful bidder in line with the current best regulatory practice.
- 2.11 By GD17, most UK regulators had adopted a post-tax vanilla WACC methodology, and we had also applied it to NIE Networks and NI Water. In our GD17 Final Determination, we concluded that a post-tax vanilla WACC approach offers clear advantages, particularly in aligning annual costs incurred by the company with its revenue entitlement. We, therefore, applied it to Evolve from the outset.⁶

⁶ [GD17 Final Determination](#) – paragraph 10.99

- 2.12 SONI receives a pre-tax WACC, while, as mentioned above, NIE Networks and NI Water receive post-tax vanilla WACC allowances. In the past, NIE Networks was provided with a tax allowance on a pre-tax WACC basis. This changed to a post-tax vanilla WACC around the time of the RP4 price control which came into effect in 2007.

3. Regulatory Framework for Phoenix Energy and Kinecx Energy

Profile Adjustment (PA)

- 3.1 In a more standard building block methodology, the required revenue for a price control period is built up using a calculation of opex (operating expenditure) plus depreciation (from capex (capital expenditure) added to the Regulatory Asset Base) plus return. This standard methodology was applied to the established national utility industries following privatisation.
- 3.2 Aspects of the same calculation would not work for the GDNs where very high startup costs, and a very small initial customer base, would result in very high initial tariffs, as this could become a barrier to startup. Therefore, a smoothed tariff was calculated based on projected costs and revenues over a longer-term revenue recovery period (initially 40 years).
- 3.3 A unique element, which is not part of a more standard building block methodology, is known as the Profile Adjustment (PA). This was introduced in 2007 for Phoenix Energy and Kinecx Energy as a means of storing the difference between revenue recovered in the early years and the actual revenue requirement of the building blocks of regulation. Each year, this difference was added to the PA as part of the Total Regulatory Value (TRV), such that TRV is the sum of the PA and the Depreciated Asset Value (DAV).
- 3.4 The PA has the effect of smoothing tariffs for customers as the customer base grows through increasing connections to the network. This means a proportion of the allowed revenue, from when there was a small customer base, would be released to the companies when the customer base is much larger. The target for the calculation of this smoothed tariff is that at the end of the revenue recovery period (2046 for Phoenix Energy, and 2045 for Kinecx Energy), the PA has been fully paid down to zero and the TRV = DAV.
- 3.5 Beyond the end of the revenue recovery period, the gas distribution licence conditions, for each of Kinecx Energy and Phoenix Energy, allow for the remaining values (the DAV) for each licensee to be paid off (or returned to the licensees).
- 3.6 For Phoenix Energy, prior to 2007, there was no specified PA, instead a proportion of the allowed revenue got stored in the DAV.

Phoenix Energy and Kinecx Energy corporation tax framework

- 3.7 The current framework for Phoenix Energy and Kinecx Energy has been in place since the GD17 price control review took effect in 2017. Prior to this date Phoenix Energy and Kinecx Energy had a slightly different regulatory framework, as follows:
- a) at licence award in 1996, Phoenix Energy's regulatory framework was set up in such a way as to provide for a fixed annual pre-tax rate of return of 8.5% over a 20-year investment recovery period;
 - b) in 2006, when the investment recovery period was extended to 50 years, Phoenix Energy's annual pre-tax rate of return was reset to 7.5% up to 2016, with the promise that returns would be reset periodically through the price control review process thereafter; and
 - c) at its licence award in 2005, Kinecx Energy was given a fixed annual pre-tax WACC of 7.5% to 2016, followed by the same commitment to periodic resets of allowed returns thereafter.
- 3.8 UR granted a licence to Kinecx Energy (formerly known as Firmus) in 2005, but it did not grant the Phoenix Energy licence in 1996 - that was done by the Department for Enterprise, Trade and Investment. Therefore, the Cost of Capital reflected in the original Phoenix Energy price control were terms agreed by Government. Subsequent price controls for Phoenix Energy (and then for Firmus) continued the approach that Government had begun.
- 3.9 It is important to note that the licence documentation from the two licence awards did not identify breakdowns of the aforementioned 8.5% and 7.5% figures. The build-up of individual, quantified allowances for the cost of equity, the cost of debt and tax were not published at the time
- 3.10 We can, however, see from the available documentation that there was an expectation, dating back to at least 2007, that the resets that were to take place from 2017 would be resets to a new pre-tax rate of return in which the prevailing cost of equity would be grossed up into a pre-tax return on equity using the standard $1 / (1 - t)$ formula set out in paragraph 2.5 above. This is apparent in:

- a) the assumptions that the UR made about the post-2016 allowed rate of return in our financial modelling during the 2007 and 2014 price control resets;⁷
 - b) Phoenix Energy's submissions to the 2012 Competition Commission inquiry;⁸ and
 - c) all parties' modelling for the GD17 and GD23 resets.
- 3.11 What we can take, therefore, from the original licence designs and from subsequent modelling of post-2016 controls is that:
- a) the allowed returns were clearly identified on the face of the licence as pre-tax WACC;
 - b) where returns were to be reset, the expectation was that the new rate of return would include an implicit allowance for corporation tax by virtue of the use of a pre-tax WACC approach.
- 3.12 While we accept that the 8.5%/7.5% rates of return were not broken down into component parts, we consider that the regulatory framework provided implicit allowances for corporation tax. This took place as part of the pre-tax WACC under an approach that did not attempt to match allowances each year with tax liabilities each year and instead sought to align corporation tax allowances and costs over a longer timeframe (in approximate terms).

Corporation Tax liabilities

- 3.13 A company will pay corporation tax on its taxable profits⁹, which is calculated by subtracting its annual tax-deductible costs from its annual revenue. Part of the tax-deductible costs are capital allowances¹⁰ provided by the UK Government tax framework. Capital allowances are used by the Government as a fiscal tool to encourage investment in new assets, driving productivity and economic growth. They allow for the deduction of some or all of the value of an item from profit before paying tax.
- 3.14 Phoenix Energy and Kinecx Energy initially paid little or no corporation tax. We accept this reflects compliance with the UK Government tax framework and its application to their financial and operational

⁷ The UR's price control framework for PE and Kinecx Energy smooths user charges over the period to 2046 and 2045 respectively. This requires the UR to make assumptions about the allowed pre-tax rate of return in every year up to these terminal dates. In 2007 and 2014, the UR set the post-2016 rate of return equal to Ofgem's then-prevailing estimates of the GDN vanilla cost of capital plus a $1 / (1 - t)$ tax wedge adjustment.

⁸ [Competition Commission, Phoenix Natural Gas Limited price determination](#), table 7.2.

⁹ <https://www.gov.uk/corporation-tax>

¹⁰ <https://www.gov.uk/capital-allowances>

circumstances at the relevant time. We expect the amount of corporation tax they subsequently pay increases over time.

How Phoenix Energy and Kinecx Energy implicit corporation tax allowances are calculated

- 3.15 In principle, we can calculate an estimated implicit corporation tax allowance each year. It is calculated by subtracting the pre-tax WACC from the post-tax vanilla WACC to get the implicit corporation tax allowance percentage. This percentage can then be multiplied by the TRV to derive the implicit corporation tax allowance value.
- 3.16 For the GD17 Final Determination, published on 15 September 2016, we provided the input values and calculation of the pre-tax WACC for Phoenix Energy and Kinecx Energy. The inputs to this calculation are demonstrated in Table 3.1 with further calculation in Table 3.2 providing the implicit corporation tax allowance percentage. It should be noted that these GD17 figures were subject to later adjustment via the GD17 rate of return adjustment mechanism. This mechanism adjusted the allowed cost of debt, to take account of debt market changes, and the corporation tax rate, to take account of any Government adjustments.

Table 3.1: GD17 WACC¹¹

GD17 Overall Cost of Capital Calculation	Kinecx Energy	Phoenix Energy
Gearing	55%	55%
Risk Free Rate	1.25%	1.25%
Equity Risk Premium	5.25%	5.25%
Debt Beta	0.1	0.1
Asset Beta	0.4	0.4
Equity Beta	0.77	0.77
Post-tax cost of equity	5.28%	5.28%
Pre-tax cost of equity (Grossed up to account for Corporation Tax Rate)	6.59%	6.59%
Cost of Debt	2.45%	2.36%
Corporation Tax Rate	20%	20%
Vanilla WACC (Using Post-tax Cost of Equity)	3.72%	3.67%
Calculated Pre-tax GD17 WACC (Using Pre Tax Cost of Equity)	4.32%	4.26%

Note: 20% corporation tax rate is rate when GD17 price control was set, but was subject to uncertainty mechanism adjustment which accounted for change to 19% rate in 2017

Table 3.2: Deriving the implicit allowance for corporation tax within the pre-tax WACC

Input to Pre-tax WACC	Kinecx Energy	Phoenix Energy
Pre-tax cost of equity	6.59%	6.59%
Post-tax cost of equity	5.28%	5.28%
Tax amount in the Pre-tax cost of equity	1.32%	1.32%
Gearing	55%	55%
Implicit Corporation Tax Allowance	0.59%	0.59%

3.17 A snapshot of the 2017 and 2018 years in Table 3.3 demonstrates an illustrative example with indicative figures of how we would calculate this. 2018 is the point in time where, as far as we understand, both companies started to pay actual cash corporation tax. Our understanding comes

¹¹ <https://www.uregni.gov.uk/publications/gd17-final-determination-final> (Annex 15)

from reviewing their cash flow statements in their submitted Regulatory Instructions and Guidelines (RIGS) and Regulatory Accounts. The implicit corporation tax allowance (%) is that calculated in Table 3.2: .

Table 3.3: Implicit Corporation Tax v Actual Corporation Tax Paid for Phoenix Energy and Kinecx Energy for 2017 and 2018

Phoenix Energy	2017	2018
Nominal TRV Value	£636,302k	£656,553k
Implicit corporation tax allowance	0.59%	0.59%
Implicit corporation tax allowance	£3,776k	£4,021k
Actual Cash Corporation Tax Paid	0	£1,795k
Kinecx Energy	2017	2018
Nominal TRV Value	£153,071k	£171,240k
Implicit corporation tax allowance	0.59%	0.59%
Implicit corporation tax allowance	£908k	£1,016k
Actual Cash Corporation Tax Paid	0	£50k

- 3.18 As is demonstrated by the illustrative example in Table 3.3, in 2017 both companies did not pay actual cash corporation tax and received an implicit corporation tax allowance. In 2018, the companies paid cash corporation tax, however, it was significantly lower than the implicit corporation tax allowance.
- 3.19 We are aware of the timing differences between cash corporation tax payable and the in-year corporation tax liability. The purposes of Table 3.3 is to provide an illustration that implicit allowances have been received when actual cash corporation tax has either been lower or not due to be paid. Additionally, the submitted regulatory accounts and Regulatory Instructions and Guidance (RIGs) from both companies, indicate that no cash corporation tax was paid prior to this period.
- 3.20 As is indicated, Table 3.3 is using indicative numbers for illustrative purpose only. An information asymmetry exists between UR and Phoenix Energy and Kinecx Energy in the historical detail of the corporation tax paid and any additional information concerning intra-group tax arrangements that specifically affect the regulated companies. Given this information asymmetry we expect both Phoenix Energy and Kinecx Energy to be transparent in providing evidence detailing the corporation tax paid over the life of their licence to date.

Relationship between the PA and corporation tax

- 3.21 The illustrative analysis in the preceding sub-section presents the question of what, in the case where the implicit allowance for corporation tax has exceeded the actual corporation tax liability for that year, the difference between the two has been used for. We see two main possibilities:
- Kinecx Energy and Phoenix Energy may have received the difference in cash terms (via charges levied on customers) meaning that it was available for the GDN to make use of directly (e.g. to enable extra payments of dividends to shareholders or to offset borrowing requirements).
 - The additional amount over and above the actual corporation tax payable could have been added to Kinecx Energy and Phoenix Energy TRVs respectively, as part of the broader regulatory arrangements for part of the GDN's allowed price control revenues.
- 3.22 Our initial view is that the second accounts for all, or a large part, of the difference, at least in the period when regulatory revenue allowances are being deferred to future time periods.
- 3.23 For Phoenix Energy, the implicit corporation tax allowance (insofar as not used to pay corporation tax liabilities) could potentially be stored in both the DAV pre-2007 and PA from 2007 onwards. For Kinecx Energy, the additional corporation tax allowance could potentially be stored in the PA, if not within in-year regulatory revenue.
- 3.24 It is, therefore, important to note that the effect of the PA is such that, even if Phoenix Energy and Kinecx Energy have received a higher implicit corporation tax allowance than the corporation tax paid in year, this does not mean that Phoenix Energy and Kinecx Energy have actually received the money for that.
- 3.25 Whatever amount of corporation tax is stored in the TRV as part of the PA is inflated as part of the general inflation which preserves its future value and is also subject to a real rate of return. We assume that this store of corporation tax allowance within the PA can be used to contribute to future corporation tax liabilities.

Future corporation tax liability projections

- 3.26 Based on the forecast GD23 financial models issued at the GD23 licence decision¹², the GD23 price control marks the point at which the annual

¹² [https://www.uregni.gov.uk/news-centre/GD23 Licence Decision](https://www.uregni.gov.uk/news-centre/GD23-Licence-Decision)

corporation tax liabilities may exceed the implicit corporation tax allowances from the allowed WACC. Table 3.4 below provides the forecast implicit corporation tax allowance and modelled corporation tax payable for both companies over the GD23 period. These values are illustrative at this stage as the financial models and rate of return (WACC) adjustment mechanism will be updated with revised inputs from the GD23 period.

Table 3.4: Modelled tax allowance vs tax payable (£m, nominal prices)

	2023	2024	2025	2026	2027	2028	Total
Phoenix Energy							
Implicit Corporation Tax Allowance	5.2	5.8	5.8	5.8	5.8	5.9	34.4
Corporation Tax Payable	8.7	7.7	6.0	6.5	7.3	8.0	44.1
Kinecx Energy							
Implicit Corporation Tax Allowance	2.0	2.3	2.3	2.3	2.4	2.4	13.6
Corporation Tax Payable	1.4	1.9	1.5	1.1	1.5	1.9	9.4

3.27 The table illustrates that Phoenix Energy may be in a position where it is generally paying increasing amounts of corporation tax without a corresponding increase in its corporation tax allowances. The same situation will likely apply to Kinecx Energy in the next price control using this methodology.

4. Issues and regulatory objectives for GD29 price control

Financeability

- 4.1 The emerging difference between allowed corporation tax and payable corporation tax has led to concerns about the companies' financeability in GD29. This first became apparent to us in 2022 when we engaged with credit rating agencies to understand the implications that our GD23 draft determination may have for Phoenix Energy's credit ratings.
- 4.2 All other things being equal, the corporation tax shortfall shown in Table 3.4 will result in Phoenix Energy generating lower funds from operations (FFO)¹³ This means that Phoenix Energy will exhibit weaker interest cover – specifically on the post-maintenance interest cover (PMICR)¹⁴ metric – and weaker overall credit quality, putting pressure on existing credit ratings.
- 4.3 In our GD23 Final Determination, we found that Phoenix Energy is capable of maintaining PMICR above 1.4 times and of obtaining a Baa2/BBB credit rating by operating at lower gearing levels than has previously been the case and by making a prudent choice of financial structure going forward. However, we can expect that the rating agencies' opinions will weigh increasingly heavily on Phoenix Energy in GD29 and beyond as the gap between corporation tax paid and corporation tax allowance grows further still. As one illustration of this, the financial models published alongside our final GD23 determinations show the PMICR falling below 1 times at some point in the future, even though other financial ratios exhibit an improving trend.
- 4.4 Kinecx Energy does not have a credit rating and, hence, the opinions of the credit rating agencies are not as directly relevant. However, it is likely that Kinecx Energy's lenders (or potential lenders) will be of a similar view to the rating agencies about its credit quality.
- 4.5 We expect both Phoenix Energy and Kinecx Energy to take appropriate action within their control to maintain their own financeability. This will primarily involve them making prudent choices on their capital structure (e.g. levels of debt).

¹³ FFO is Funds from Operation = Regulated Revenue - operating costs - Tax - Interest

¹⁴ PMICR is Post Maintenance Interest Cover = Post Maintenance FFO/Interest

Post Maintenance FFO = FFO - core asset depreciation - profile adjustment (before tax adjustments recommended in this document) + interest

- 4.6 Phoenix Energy and Kinecx Energy are also able to engage with credit rating agencies or lenders on the way that their financeability is assessed by these parties. There are material differences in the price control framework for these companies compared to the typical UK RAB-based utility company, and this should be fully understood by these parties. For example, the use of a pre-tax WACC approach and the impact of the Profile Adjustment on the profile of revenue recovered from customers over time.
- 4.7 Nonetheless, in setting price controls for Phoenix Energy and Kinecx Energy, we want to ensure that these controls would not prevent a notional efficient GDN from being financeable (e.g. that these controls would not prevent a notional efficient company from being able to manage its long-term credit quality in a way that is consistent with our regulatory assumptions for the cost of debt and any relevant licence conditions). In this context, the issues outlined above mean that it is prudent for us to consider potential changes to the regulatory approach for these companies from GD29 onwards.

Changes to the regulatory approach to tax and consumer protection

- 4.8 We could respond to the growing divergence between the Phoenix Energy's and Kinecx Energy's corporation tax payments and corporation tax allowances by changing the way that corporation tax allowances are provided under the price control framework. This could involve moving away from the pre-tax WACC approach to a separate allowance for tax via a post-tax WACC approach.
- 4.9 However, moving to a separate allowance for corporation tax via a post-tax WACC at the point when tax liabilities start to exceed allowances from the pre-tax WACC could financially disadvantage consumers. This could result in consumers paying twice; once for corporation tax allowed historically, when little to no corporation tax was paid, and again with the move to the new tax basis where allowances are aligned to meet expected tax liabilities.
- 4.10 A further complication to come back to, as discussed in Chapter 3, is the extent that a corporation tax allowance has exceeded the tax liability in the past. These tax allowances have probably not been provided to Phoenix Energy and Kinecx Energy through direct revenue from customers yet, but may have been added to the TRV via the PA to be released in future revenue from customers.
- 4.11 Therefore, our view is that while it seems reasonable to consider potential changes from a pre-tax WACC approach to a post-tax WACC approach

(with a separate explicit allowance for corporation tax) for the two GDNs, it will also be important to consider potential transitional issues and inter-temporal effects from a change in approach. In contrast to a post-tax WACC approach, a pre-tax WACC approach is not intended to provide funding each year for the expected corporation tax liabilities in that year and provides for a more longer-term remuneration profile. A switch from a pre-tax approach to post-tax approach could, especially in the context of growing networks, lead to customers paying twice unless mitigating action is taken.

Regulatory precedent on changing the treatment of tax

- 4.12 We highlight the explicit warning from the Competition Commission in 2007 when it was asked to opine on a possible switch from a simple tax wedge set in line with the statutory corporation tax rate to a modelled tax allowance: "...intertemporal effects are an important consideration for us in calculating the Q5 cost of capital. If the CAA was to change now to using an effective tax rate, we would need to ensure that we did not, in effect, ask users to pay twice by ignoring the pre-funding that the airports have received for future tax payments. A failure to recognize the potential for double counting would lock in the historical benefit to equity and lead to shareholders earning returns in excess of their cost of capital."¹⁵
- 4.13 We are aware that that the Office of Rail and Road (ORR) switched to a modelled post-tax WACC allowance. It determined that Network Rail had been overfunded for corporation tax as part of its CP3 review. ORR also decided to make offsetting adjustments for corporation tax overfunding to address transitional issues similar to that which we describe in paragraphs 4.9 to 4.11 above.
- 4.14 We recognise that other regulators have also changed their approach to corporation tax in the past – for example, Ofgem and Ofwat. The switches have been made without any offsetting adjustments for any historical differences between corporation tax allowances and corporation tax paid. However, we note that none of the companies concerned are exactly comparable to Phoenix Energy and Kinecx Energy, especially as regards the way in which the regulatory framework provides for a self-contained recovery of investment in a new network over a defined recovery period. The specific circumstances pertaining to each switch are important.

¹⁵ [Competition Commission \(2007\), Heathrow/Gatwick, appendix F.](#)

Regulatory objectives

- 4.15 In light of the issues set out above, two objectives are particularly relevant to this specific consultation:
- a) ensuring that our approach to the allowance for corporation tax (and assessment of debt financeability) under the price control frameworks for Phoenix Energy and Kinecx Energy would not detract from the financeability of a notional efficient GDN; and
 - b) protecting consumers from paying more than is necessary, over time, in relation to the GDN's corporation tax liabilities.
- 4.16 Furthermore, and as a broader point, we consider it important to maintain trust in the regulatory regime (from the perspective of customers, companies, investors and other stakeholders), by ensuring that any changes to the regulatory approach over time are reasonable.
- 4.17 We have set out some illustrative options to begin to address these issues below and provide a variety of possibilities for how to treat tax in GD29.
- 4.18 We recognise that any settlement relating to the treatment of tax will be of importance to Phoenix Energy and Kinecx Energy in their discussions with rating agencies and lenders. We hope that they will respond to this Call for Evidence by providing us with information which they consider important in this context.
- 4.19 Phoenix Energy and Kinecx Energy obviously have more information about their financial position, past, present and projected than we have access to. We are therefore looking to them to come forward, on a transparent basis, with information about their financial position (particularly, but not only, in relation to historical corporation tax liabilities and future projections) which will assist us in understanding the position of rating agencies and lenders on this matter. We expect that the information provided will be well evidenced and that it will give proper weight to the interests of consumers as well as those of their shareholders.

5. Preliminary list of options

- 5.1 Before considering the preliminary list of options it is important to highlight that option 1 and option 4 are the simplest options for pre-tax and post-tax WACC approaches respectively. The other options are modifications of options 1 and 4 to address some of the complications arising for the GDNs in practice.

Table 5.1 Summary of G29 tax options for consideration

Option overview		How it is calculated
1. Status quo - continue with pre-tax WACC allowance	The current approach, which involves a relatively simple calculation to provide allowances for corporation tax liabilities under the price control. Price control revenue allowances involve multiplication of TRV by a pre-tax WACC, which provides an implicit allowance for corporation tax liabilities.	Pre-tax WACC is calculated such that, in broad terms, it provides a return on the TRV equal to the sum of: (a) a post-tax return on the TRV equal to the TRV multiplied by the estimated post-tax vanilla WACC; and (b) a notional corporation tax liability calculated as the prevailing headline rate of corporation tax multiplied by the pre-tax return on TRV.
2. Pre-tax WACC allowance with top-up allowance if that is insufficient	The approach of a pre-tax WACC would be retained. As under option 7, calculate: (a) part of the TRV that represents a store of funding for future corporation tax liabilities; and (b) there may also be some element of Phoenix Energy's and Kinecx Energy's future corporation tax liabilities that it has already been funded for via historical price control revenue allowances, but a top-up allowance would be provided if allowance is insufficient.	Estimation of the corporation tax liabilities of the notional efficient company over the forthcoming price control period. Make no further allowance for corporation tax if analysis confirms that the total funding for corporation tax available from the pre-tax WACC, from regulatory depreciation on the TRV and from allowed revenues in past price control periods is sufficient to cover the estimated corporation tax liabilities of the notional efficient company over the forthcoming period. Provide a top-up allowance for corporation tax if there is a shortfall in funding estimated from the analysis above
3. Retain pre-tax WACC subject to high-level modelling of long-term	This is as option 1 but subject to refinements to modelling to demonstrate sufficient revenue recovery and commitment to allow	First, provide high-level modelling to determine whether, for an investment profile similar to Phoenix Energy and Kinecx Energy, and taking account of the Profile Adjustment, the regulatory

Option overview		How it is calculated
adequacy of funding	sufficient revenue if conditions change.	framework would provide sufficient revenue over the long-term to cover corporation tax liabilities (and any associated cost of finance), unless the corporation tax rate increases significantly (and potentially subject to any other relevant qualifications identified). Second, make a commitment that if conditions change (e.g. increase in corporation tax rate) that mean that the funding for corporation tax via the pre-tax WACC may no longer be sufficient, there would be a move to an alternative option to address that concern.
4. Move to post-tax vanilla WACC with no transitional adjustments	Change approach to allowed return such that it is calculated by multiplying the TRV by the estimated post-tax vanilla WACC. Separate explicit allowance for corporation tax calculated as an estimate of the corporation tax liabilities of the notional efficient company over the forthcoming price control period.	The estimate of the corporation tax liabilities of the notional efficient company would be calculated using detailed modelling that takes account of factors including: (i) the historical capital expenditure of the notional efficient company; (ii) the forecast capital expenditure of the notional efficient company over the forthcoming price control period; (iii) the capital allowances applicable to that historical and forecast expenditure; and (iv) the forecast rates of corporation tax over the price control period. In setting allowances at the GD29 review, no account would be taken of the price control funding (including TRV additions) provided during previous price control periods in relation to corporation tax liabilities.
5. Move to post-tax vanilla WACC with one-off TRV adjustment intended to be Net Present Value (NPV) neutral on a forward-looking	Separate explicit allowance for corporation tax liabilities, and move to a post-tax vanilla WACC, as under option 4. One-off TRV adjustment applied at the start of GD29 period which is intended to: (a) protect customers from paying twice for corporation tax	Calculation of TRV adjustment made by taking an NPV, over a very long time horizon beginning at the start of the GD29 period, of the annual differences between forecasts of: (i) the explicit allowance for corporation tax that would apply under option 4 above and (ii) the implicit allowances for corporation tax that would apply if there had not been a change in

Option overview		How it is calculated
basis	liabilities as a consequence of the change in approach; or (b) protect the company and investors from underfunding corporation tax liabilities because of the change in approach. In practice given profile of Phoenix Energy's and Kinecx Energy's investment and the regime for capital allowances, the TRV adjustment is likely to be negative, acting to protect customers from paying twice.	approach (i.e. under option 1 above). In setting allowances at the GD29 review, no account would be taken of the price control funding (including TRV additions) provided during previous price control periods in relation to corporation tax liabilities.
6. Move to post-tax vanilla WACC with one-off TRV adjustment to deduct unused corporation tax funding stored in the TRV	As under option 5, including a separate explicit allowance for corporation tax liabilities, and a move to a post-tax vanilla WACC, but with a different method for calculating the one-off TRV adjustment.	The one-off TRV adjustment would be calculated on a historical basis, by reference to the value of the TRV (at the start of the GD29 period) which can reasonably be attributable to historical price control allowances for corporation tax that have not yet been needed to pay corporation tax liabilities. It would be a deduction from the TRV that takes account of the difference between: (a) an estimate of the total funding for corporation tax liabilities that has been implicitly provided historically (via the pre-tax WACC) and which has been added to, and built up over time in the TRV; (b) the total corporation tax liabilities that Phoenix Energy and Kinecx Energy has paid over that period. The calculation of the TRV adjustment might use a similar method as for the estimation of the "funding for corporation tax stored in the TRV" under option 7.
7. Move to post-tax vanilla WACC with recognition of historical funding for future corporation tax liabilities.	Calculate separate explicit allowance for corporation tax liabilities and move to a post-tax vanilla WACC. The explicit allowance for corporation tax liabilities in a given year would reflect the modelled allowance for corporation tax as under	The deduction would reflect recognition that: (a) part of the TRV (and in turn part of regulatory depreciation allowances on the TRV) represents a store of funding for future corporation tax liabilities; and (b) there may also be some element of Phoenix Energy's and Kinecx Energy's future corporation tax liabilities that it has already been funded for via historical price control revenue allowances.

Option overview		How it is calculated
	option 4 above, but with a potential deduction to avoid customers paying twice for Phoenix Energy's and Kinecx Energy's corporation tax liabilities. No one-off TRV adjustment. (in contrast to options 5 and 6)	If the total funding for corporation tax found to be stored in the TRV is large, the totality of the modelled allowance for corporation tax in the near-term might be provided via depreciation on the TRV rather than an additional revenue allowance component.

- 5.2 At this point, we have not provided an exhaustive assessment of options. A fuller and comparative assessment will be required with further evidence and analysis. Instead, at this point, we provide an overview of some of the key points and potential implications of each option. We welcome views on whether we have captured the key points and potential implications and whether there are any further options that we should consider.
- 5.3 **Option 1** is the status quo: a pre-tax WACC. It recognises that the timing mismatch is a known and established feature of the Phoenix Energy and Kinecx Energy regulatory frameworks that dates back to licence award. It is the easiest to implement. It also concludes that it is for Phoenix Energy and Kinecx Energy to manage the impact of the annual mismatch between tax paid and the implicit allowance for corporation tax. In practice, however, this could be problematic for Phoenix Energy and Kinecx Energy if they could reasonably demonstrate that the mismatch in tax allowances and liabilities would mean they need to adjust the amounts that they borrow to fit with the rating agencies' / lenders' ensuing assessments of credit quality.
- 5.4 **Option 2** retains the pre-tax WACC approach but with a top-up allowance if that is insufficient. This would attempt to provide a response to an issue that GDN corporation tax liabilities over the forthcoming price control period are not adequately provided for under the price control framework but would require significant further work.
- 5.5 **Option 3** is a way to respond to the concern through illustrative and theoretical modelling; and is easier to implement, however, this may not be a sustainable option for addressing our objectives, particularly around debt financeability.
- 5.6 **Option 4** changes the tax approach to a post-tax vanilla WACC. This would remedy the issue for Phoenix Energy and Kinecx Energy around the mismatch in corporation tax allowances and liabilities, and is simple

to implement, but would mean that consumers could pay twice for future tax liabilities.

- 5.7 **Option 5** changes the corporation tax approach to a post-tax vanilla WACC but makes a one-off, forward looking NPV neutral TRV adjustment. The change in corporation tax treatment again seeks to address issues that could be demonstrated from a mismatch in corporation tax allowances and liabilities, and the TRV adjustment would be intended to prevent consumers from overpaying for future corporation tax liabilities. However, we are conscious that a TRV adjustment could be perceived as controversial. We recognise that the TRV is a highly important part of the regulatory framework and is relevant to perceptions of the value of Phoenix Energy's and Kinecx Energy's businesses. There are also potential implementation issues as it relies on long term corporation tax liability projections which are uncertain.
- 5.8 **Option 6** moves to post-tax vanilla WACC with one-off TRV adjustment to deduct unused corporation tax funding stored in the TRV. The move to vanilla WACC and the use of historical corporation tax allowances to pay for future tax liabilities would seek to address our objectives relating to financeability. It could also address the objective relating to customer protection if we were to conclude that the amount of money that customers will need to pay Phoenix Energy and Kinecx Energy in relation to corporation tax (including via the TRV) is too high relative to the actual corporation tax liabilities that Phoenix Energy and Kinecx Energy have faced in the past and will face in the future. However, like under option 5, we are conscious that a TRV adjustment could be perceived as controversial. We acknowledge that this option would require significant further work to finalise historical corporation tax payments and liabilities.
- 5.9 **Option 7** moves to post-tax vanilla WACC with recognition of historical funding for future corporation tax liabilities. The move to vanilla WACC and the use of historical corporation tax allowances to pay for future corporation tax liabilities would seek to address our objectives, without any perceived controversy from a TRV adjustment. Like option 6 it would require significant further work to understand historical corporation tax payments and liabilities.

Approach to assessing and monitoring debt financeability

- 5.10 Given the issues raised concerning debt financeability we also seek views on proposed refinements to the analysis we would carry out to assess debt financeability, in light of the issues arising in relation to corporation tax.

- 5.11 Changes to our approach to debt financeability might act as a substitute or complement to any changes to the price control allowances for corporation tax (as discussed in the options above).
- 5.12 At this stage, we see merit in consulting on two specific proposals: (i) using different scenarios for the treatment of the depreciation on the TRV when calculating credit metrics; and (ii) assessing credit metrics over a long-term time horizon rather than the period covered by the price control review. The first of these proposals stems from a view that, for the purposes of calculating the PMICR metric, there is a reasonable argument that the element of regulatory depreciation that is actually the release of funding stored in the TRV for future corporation tax liabilities should be treated differently from conventional regulatory depreciation (e.g. gradual repayment to investors of upfront funding provided historically for capital investment). The standard approach to the PMICR metric does not take regulatory depreciation allowances into account (as cover over debt payments). But there is an argument that if the tax liabilities expected in a given year are to be factored into the PMICR calculation then the element of regulatory depreciation attributable to those liabilities should also be factored in.
- 5.14 On the second proposal, the value of a long-term horizon is that it helps to tackle a key underlying concern that explains, in part, the methodologies used by credit rating agencies. This is the concern that, without adjustments for regulatory depreciation under the PMICR metric, a regulator may take action to address perceived financeability problems over the forthcoming price control period (e.g. using accelerated depreciation or NPV adjustments to bring forward revenue) where such action has the effect of creating or worsening financeability problems in future price control periods. A longer time horizon would help give assurance that any improvement in financeability metrics arising for Phoenix Energy and Kinecx Energy at GD29 is not the result of a short-term fix that causes problems in subsequent price control periods.
- 5.15 Some simplifying assumptions would be needed for the purpose of the long-term projections (e.g. on costs and the allowed return) and the exercise should be a proportionate one with appropriate caveats given about future uncertainties. But we already utilise a long-term financial modelling perspective for Phoenix Energy and Kinecx Energy because of the calculations required to operate the Profile Adjustment.

Uncertainty Mechanisms

- 5.16 The approaches described above concern the way that ex-ante allowances for corporation tax are determined at price control reviews. In addition, it is common for price control arrangements to include

uncertainty mechanisms that mean that the applicable allowances for corporation tax are calculated or adjusted during or at the end of the price control period. For example, there may be a mechanism to allow for a change in the corporation tax rate. Uncertainty mechanisms could apply under a pre-tax WACC or post-tax vanilla WACC approach, but their design would depend on which option is chosen.

- 5.17 With regards to this consultation, the potential role of uncertainty mechanisms may be worth consideration in the development and comparison of policy options. However, fuller consideration and determination of uncertainty mechanisms will form part of the GD29 price control process.

6. Questions for Consultation

Potential changes to the price control funding of Phoenix Energy's and Kinecx Energy's corporate tax liabilities

- Q1. Do you consider that there are grounds for us to consider changes to the price control funding of Phoenix Energy's and Kinecx Energy's corporation tax liabilities? Please explain the rationale for your view.
- Q2. Do you consider that we are justified in our concern that simply moving from the current approach to funding Phoenix Energy's and Kinecx Energy's corporation tax liabilities (via the pre-tax WACC) to an explicit allowance for corporation tax (combined with a post-tax WACC) would pose risks of customers paying twice for Phoenix Energy's and Kinecx Energy's corporation tax liabilities? Please explain the rationale for your view.
- Q3. Do you consider that carrying out a historical assessment of the implicit allowances for corporation tax, and comparing these to Phoenix Energy's and Kinecx Energy's actual tax liabilities, would provide relevant evidence to help inform decisions on any changes to the regulatory approach to funding Phoenix Energy's and Kinecx Energy's corporation tax liabilities? Please explain the rationale for your view.
- Q4. Do you have any initial views on any of the list of policy options, or any further options that might be considered?
- Q5. Are there are other facts or considerations which are not sufficiently covered in this Call for Evidence which you consider to be important at this stage for consideration of the future funding of Phoenix Energy's and Kinecx Energy's corporation tax liabilities?

Historical price control allowances for Phoenix Energy and Kinecx Energy corporate tax liabilities

- Q6. Do you consider that there has been an "implicit allowance" for corporation tax (provided as part of the pre-tax WACC allowance) under the price control arrangements for Phoenix Energy and Kinecx Energy? Please explain the rationale for your view.
- Q7. Do you consider that for the period from GD17 onwards, the level of implicit allowance can be calculated based on the parameters used to build up WACC, as illustrated in Table 3.2. Please explain the rationale for your view, and if you disagree, explain an alternative calculation method.

- Q8. For the period before GD17, what evidence might be used to estimate the implicit allowance for corporation tax if there is no explicit breakdown of the corporation tax element of the pre-tax WACC?
- Q9. Under the current pre-tax WACC approach, there may be cases where the implicit allowance for corporation tax in a given year has exceeded Phoenix Energy's and Kinecx Energy's corporation tax liability for that year. Is it reasonable to view this difference as an amount available to meet Phoenix Energy's and Kinecx Energy's corporation tax liabilities in subsequent (or previous) years? Please explain the rationale for your view.
- Q10. In cases where part of Phoenix Energy's and Kinecx Energy's price control allowances are being deferred until future time periods (via Profile Adjustment additions to the TRV), and in a scenario where the implicit allowance for corporation tax have historically exceeded Phoenix Energy's and Kinecx Energy's corporation tax liabilities, is it reasonable to view TRV as including a store of funding for Phoenix Energy's and Kinecx Energy's (future) corporation tax liabilities? Please explain the rationale for your view.
- Q11. Are there other facts or considerations which are not sufficiently covered in this Call for Evidence which you consider to be important at this stage for understanding the historical context for Phoenix Energy's and Kinecx Energy's corporation tax allowances and historical corporation tax liabilities?

Potential changes to the debt financeability assessment

- Q12. Do you consider that it would be feasible and worthwhile for the assessment of debt financeability metrics carried out at GDN price control reviews to be refreshed to end of the revenue recovery period, and do you think there is anything further that should be considered in this calculation?
- Q13. Do you have any other views on the way that debt financeability assessment should be carried out for Phoenix Energy and Kinecx Energy at future price control reviews, given the issues raised in this Call for Evidence document?

7. Responding to this Consultation and Next Steps

- 7.1 Stakeholder engagement plays an important part in our regulation process, and we encourage you to become part of this.
- 7.2 The responses received will inform a further consultation in 2026, leading to a final policy position ahead of the GD29 price control determinations.
- 7.3 Responses should be received on or before 5:00pm on Friday 13 February 2026 and should be addressed to:

Dwayne Boyle

Utility Regulator

Millennium House

Great Victoria Street

Belfast

BT2 7AQ

Email: gas_networks_responses@uregni.gov.uk with cc to dwayne.boyle@uregni.gov.uk

Our preference would be for responses to be submitted by email

- 7.4 Your response may be made public by the Utility Regulator. If you do not want all or part of your response or name made public, please state this clearly in the response by marking your response as 'CONFIDENTIAL'.
- 7.5 If you want other information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential.
- 7.6 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 and the Data Protection Act 2018).
- 7.7 As stated in the GDPR Privacy Statement for consumers and stakeholders, any personal data contained within your response will be

deleted once the matter being consulted on has been concluded, though the substance of the response may be retained.

- 7.8 Copies of all documents can be made available in large print, Braille, audio cassette and a variety of relevant minority languages if required.

Next Steps

- 7.9 Table 7.1 below lays out the next steps in the Treatment of Corporation Tax consultation process and provides indicative dates.

Table 7.1 Next Steps in Treatment of Corporation Tax Process

Process Steps	Indicative Dates
Publication of Call for Evidence	19 November 2025
12-week Consultation Period	19 November 2025 – 13 February 2026
Review of responses and engagement with stakeholders	13 February 2026 – May 2026
Publication of Consultation Paper	May 2026
12-week Consultation Period	May 2026 – August 2026
Review of responses and engagement with stakeholders	August 2026 – November 2026
Publication of Policy Position	November 2026
GD29 Draft Determination	Q1 2028
GD29 Final Determination	Q3 2028