

**PRICE CONTROL
FOR
NORTHERN
IRELAND'S GAS
DISTRIBUTION
NETWORKS GD29**

**Annex A
GD29 Treatment of Corporation Tax
25 June 2026**

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 second stage of a process to review the treatment of corporation tax as part of our regulatory framework for Phoenix Energy and Kinecx Energy. This paper provides a summary of the responses to the first stage Call for Evidence. It also provides, for consultation, our proposed approach to further inform our decision on the treatment of corporation tax.

AUDIENCE

This consultation will be of interest to all gas licensees. Government departments, organisations representing consumer interests and other stakeholders will also be interested given the potential for greater transparency.

CONSUMER IMPACT

The outcome of the treatment of tax review process will inform the GD29 and 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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1. Introduction

- 1.1 Our November 2025 Call for Evidence (CfE) on the treatment of corporation tax for GD29¹ sought stakeholder views and evidence to develop proposals on the treatment of corporation tax for Kinecx Energy (KE) and Phoenix Energy (PE).
- 1.2 The CfE marked the first stage of our review process to inform the regulatory framework for both companies for the next price control, GD29.
- 1.3 As part of this GD29 Approach Consultation, we are now consulting on our proposed approach to further inform our future decision on the treatment of corporation tax for GD29.
- 1.4 This Annex:
- Summarises briefly the November 2025 CfE issues, key stakeholder responses and our response to these.
 - Proposes our approach and process for the treatment of GD29 treatment of Corporation Tax.
 - Proposes our approach to gathering further evidence on the historical regulatory framework for PE and KE, including the rationale for this exercise.
 - Proposes our approach for modelling corporation tax liabilities and allowances.
 - Sets out current thinking on the policy considerations that we plan to take into account as part of the decision-making process.
 - Provides a summary of stakeholder responses to our CfE questions.

¹ [Call for Evidence on the treatment of corporation tax for gas distribution network price controls in Northern Ireland | Utility Regulator](#)

2. Call for Evidence

- 2.1 We published the GD29 Treatment of Corporation Tax Call for Evidence (CfE) on 19 November 2025. We requested responses be submitted by 5:00pm on 13 February 2026, however following a request by PE, we provided an extension until 5:00pm on 27 February 2026.
- 2.2 Our CfE sought views on whether the historical approach to the treatment of corporation tax for these companies 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 PE.
 - The potential for consumers to pay twice if a transition to a post-tax approach is not carefully managed.
- 2.3 In particular, we invited evidence and views on corporation tax historical allowances and corporation tax liabilities, the implications of changing the regulatory approach to corporation tax, and debt financeability metrics.
- 2.4 We also set out preliminary options for consideration. The intention was not to undertake an exhaustive assessment of potential options, but instead to act as a starting point to gauge from stakeholders whether we have captured their key points, potential implications and whether there are any further options that we should also consider.
- 2.5 Our option 1 (pre-tax WACC) and option 4 (post-tax WACC) represented two quite different regulatory approaches to the price control remuneration of corporation tax:
- Option 1 represents the status quo for PE and KE and involves a relatively simple way to make price control allowances for corporation tax via the setting of the WACC.
 - Option 4 would involve more detailed modelling of corporation tax liabilities (for a notional efficient company) over the forthcoming price control period and a separate, explicit price control allowance for these liabilities.
- 2.6 The other options we presented in the CfE were largely variants on options 1 or 4, involving modifications to address some of the specific complications arising for the GDNs in practice, such as those summarised

in paragraph 2.2 above. The CfE should be referred to for a fuller representation of the options that we consulted on.

2.7 We received two responses to the CfE from the companies affected:

- Kinecx Energy
- Phoenix Energy

2.8 The companies provided views on the historic regulatory framework, regulatory practice and precedent and assessed the options presented in the CfE. They also responded to the thirteen CfE questions.

2.9 We have summarised the key points below and provided a summary of the responses to the questions in Annex 1 – Responses to Call for Evidence questions. The companies' full response documents have also been published alongside the GD29 Approach consultation.

2.10 Key points the companies made in their responses are as follows:

- a) Both had a preference for a transition to a post-tax vanilla WACC with an explicit corporation tax allowance and no transitional or retrospective adjustments. This was presented as option 4 in the CfE. KE was also supportive of option 2 (a pre-tax WACC allowance with top-up allowance if that allowance is insufficient).
- b) Both highlighted the importance of regulatory stability and predictability, and that UR should align with regulatory precedent and best practice.
- c) Both consider that a change is required to ensure the companies are financeable and can meet future tax liabilities.
- d) Both state that it would not be possible or appropriate to assess past allowances for corporation tax before GD17, and deem there is no evidence that customers would pay twice if option 4 was implemented.
- e) Both highlighted the difficulties of analysing historical corporation tax payments versus corporation tax liabilities due to the GDNs being part of wider corporate groups and corporation tax being managed on a group-wide basis.
- f) Both consider that the Profile Adjustment is not a store of funds for tax liabilities that arise in future periods.
- g) PE considers that its licence should be modified when the policy position is decided to provide certainty for the GD29 process.

2.11 We are grateful for the information and views the companies have provided for our consideration. We acknowledge the position the companies have adopted and their supporting arguments. Our high-level comments on the above key points are as follows:

- a) Our decision will be made on the basis of our statutory duties.
- b) The positions taken in the responses from PE and KE (e.g. in relation to preferences for option 4, or there being no risks of customers paying twice in the event of a move to a post-tax WACC), rest in large part on a specific interpretation of the historical price control framework, which is in some ways at odds with that reflected in the CfE. Given this difference, we see a need for further assessment of the historical evidence in order to make informed decisions about policy for the GD29 period.
- c) We acknowledge that there are some challenges and complications in seeking to look back at the historical price control periods since the licence awards for PE and KE, and in analysing past corporation tax allowances and liabilities. However, we do not consider that these challenges and complications mean that such an exercise should not be undertaken at all. As set out in this document, we are seeking feedback from stakeholders on our approach to key aspects of the historical analysis.
- d) We acknowledge potential concerns about regulatory stability and predictability that may arise from changes to the price control arrangements for corporation tax. But it should be recognised that in their responses PE and KE are themselves seeking changes to the existing price control arrangements, rather than a continuation of the established pre-tax WACC framework that currently applies. Furthermore, our review process has been aimed at signalling to stakeholders well in advance the possible reasons for making changes to the regulatory approach to corporation tax and the broad types of decisions that may be made at GD29.
- e) Wider UK precedent on the moves to a post-tax WACC is relevant. But our view is that a more direct assessment of the historical regulatory framework for PE and KE is needed before we make a decision between regulatory policy options for GD29.

- f) In line with our broader approach to GD29, we will set price controls for GD29 that are financeable for a notional efficient company, recognising that our financing duty must give consideration to the particular circumstances of the individual licence holder. This will include consideration of other elements during the GD29 review, beyond the treatment of corporation tax, that are relevant when assessing financeability.
- g) As set out in this document, we deem it prudent to continue to review the historical framework to ensure consumers and the companies are not inappropriately disadvantaged.
- h) We will continue to assess the unique characteristics of the Northern Ireland gas networks regulatory framework, including the profile adjustment, and its interpretation, in order to inform our decision.
- i) Regarding PE's view that its licence should be modified when the policy position is decided, as set out in this document, we have amended the timeline and steps towards our decision following the CfE responses. We deem it appropriate to align with the GD29 determination and licence modification process.

3. Overview of proposed approach

Timing of decision-making process

- 3.1 Following our review of the responses to the CfE, and in light of further consideration of the policy issues arising and the GD29 process, we are not consulting at this stage on the policy position in respect of how corporation tax is to be treated for the GD29 price control. In particular, we are not consulting further at this stage on the policy options indicated in the CfE.
- 3.2 Instead, to support our decision-making process, we are consulting at this stage on three key aspects of the approach we plan to use to help make our decision on the treatment of corporation tax for GD29. Specifically, our proposed approach involves three elements:
- A plan to gather further evidence concerning the historical regulatory framework that has applied in the period from licence award to the GD23 price control period.
 - A plan to carry out financial modelling relating to corporation tax that can be used to: (a) inform the policy decision on the approach to the remuneration of corporation tax liabilities for the GD29 period; and (b) where applicable support the implementation of the selected policy option.
 - A summary of our current thinking on the policy considerations that we should consider as part of the decision-making process.
- 3.3 We set out in this annex our proposals in each area. We welcome stakeholder feedback on all three aspects of the approach.
- 3.4 As a subsequent step, we plan to publish a policy update consultation on the GD29 tax treatment which would provide the following:
- An emerging view from the research into information on the historical regulatory framework.
 - An update on our initial draft modelling of historical corporation tax liabilities and allowances.
 - A narrowing down of the regulatory policy options compared to those identified in the CfE, to produce a short list of prioritised options.
 - An emerging view of our preferred regulatory policy option(s), based on the research and modelling to date.

- 3.5 Our current plan is to publish the policy update consultation alongside our GD29 Approach decision. However, the timing and contents of the consultation will be dependent on the nature of responses to the issues covered in this annex.
- 3.6 We plan to take a minded-to decision on the price control remuneration of corporation tax for GD29 as part of our GD29 draft determination.
- 3.7 Our minded-to decision would take account of matters covered in the policy update consultation; stakeholder responses to that consultation; and potential further research and historical modelling. In addition, we would take account of information that emerges following our review of business plan submissions and as we develop the draft determinations. For instance, one of the reasons raised by GDNs for a change to the approach to tax treatment is a concern about notional company financeability and we will have better information on this aspect once we have reviewed the GD29 business plans, developed other aspects of our determinations and modelled financeability for the GD29 period and beyond.

Links to policy options from the Call for Evidence

- 3.8 The outcomes of the research into the historical regulatory framework, and the financial modelling, are likely to affect the set of regulatory policy options that are appropriate. While further consideration will be needed, we provide in Table 3.1 below a high-level indication of how these outcomes could affect the relevant set of policy options.

Table 3.1: Initial view on high-level links with regulatory policy options

	Estimated historical differences between allowances for corporation tax and notional company corporation tax liability are not financially significant	Estimated historical differences between allowances for corporation tax and notional company corporation tax liability are financially significant
Assessment of historical regulatory framework means that allowances for corporation tax from GD29 onwards should be set without regard to historical allowances for corporation tax	Options 1 or 4 likely to be more relevant options Risks of customers paying twice do not apply in principle or practice	Options 1 or 4 likely to be more relevant options Risks of customers paying twice not relevant as a matter of principle
Assessment of historical regulatory framework means that allowances for corporation tax from GD29 onwards may need to be set taking account of historical allowances for corporation tax to prevent over- or under-funding	Options 1 or 4 likely to be more relevant options Risks of customers paying twice apply in principle but not financially material in practice	Options 1, 2, 3, 5, 6 or 7 likely to be more relevant options Material risks of customers paying twice apply in principle and in practice

- 3.9 As indicated in the table, the research into the historical regulatory framework, and the financial modelling would not determine exactly which policy option would be appropriate, but it could narrow down the set of most suitable options. There would then be a need for regulatory judgement as to which policy option to choose. We set out in chapter 6 our initial thinking on the various regulatory policy considerations that would be relevant to our decision-making.
- 3.10 We provide some further information later in this document on the potential interactions between the research into the historical regulatory framework, the financial modelling and the relevant regulatory policy options.
- 3.11 At this stage we are not consulting further on the specific regulatory policy options from the CfE. We note that neither of the respondents to the CfE proposed additional options beyond those set out. Nonetheless it is possible that, as part of work later in the process, we refine some of the existing policy options or identify new ones before taking a decision on which to implement for GD29.

Timing of licence modifications

- 3.12 In its response to the CfE, PE commented on the timing of potential licence modifications. PE said that there is no procedural reason why UR needs to wait until GD29 to introduce the text of the relevant licence

modifications, even if the effect of the changes only occurs from the start of GD29. PE suggested that we could make licence modifications earlier with their effect taking place on a deferred basis.

- 3.13 PE suggested this approach due to concerns that uncertainty regarding the approach to tax could have adverse effects on its financeability. It stated that delaying licence modifications until after GD29 final determinations would make it challenging for it and KE to prepare business plans, as they may need to base these on a methodology that they do not agree with and which they cannot challenge until GD29 final determinations and licence modifications have been issued².
- 3.14 We have considered these issues, but do not agree that it would be appropriate to modify licence conditions to change the treatment of corporation tax (to apply from the start of the GD29 period) before our GD29 final determinations. We propose to take a holistic approach to every aspect of the price control, and to make our final decisions on each aspect at the same time, as is usual regulatory practice.
- 3.15 As indicated above, we do not plan to take a firm and final decision on the approach to tax treatment until final determinations. This means that, in practice, the formal decision will be made as part of the licence modification process that implements our final determinations as a whole. Earlier licence modifications are not possible on the basis of this plan.
- 3.16 It would be difficult to separate the regulatory policy decision on the approach to tax treatment from the wider GD29 process. For instance, as indicated above, one of the arguments made by GDNs for a change to the approach to tax treatment is a concern about notional company financeability. We will have better information on this aspect once we have reviewed the GD29 business plans, developed other aspects of our determinations and modelled financeability for the GD29 period and beyond. PE did not provide evidence on the need for an earlier decision. PE referred to a specific example of licence modifications made by Ofwat “on a deferred basis”. However, it is not standard custom or practice for UK regulators to modify licences in the way proposed by PE as part of the price control process.
- 3.17 Our judgement is that the importance, complexity and materiality of the issues under consideration justify our planned timeframe for decision-making and licence modifications.

² PE response to CfE, page 31 to 32

4. Evidence on the historical regulatory framework

4.1 This chapter describes our proposals to gather further evidence on the historical regulatory framework for PE and KE, including the rationale for this exercise. We take the following topics in turn:

- Alternative views on the historical regulatory framework.
- Plan to collect and assess evidence relating to the historical regulatory framework for PE and KE.
- Evidence from the changes to a post-tax WACC for other UK regulated companies
- The scale of implicit allowances for corporation tax.

4.2 We welcome feedback from stakeholders on our proposed approach as well as suggestions of specific evidence (e.g. specific documents) that we should cover in our assessment.

Alternative views on the historical regulatory framework

4.3 In the CfE, we discussed the concept of an implicit allowance for corporation tax that is provided by a pre-tax WACC approach. In contrast to post-tax WACC approach, a pre-tax WACC approach does not provide an explicit annual match between tax allowances and calculated tax liabilities. Instead, it provides a more approximate approach where timing differences between allowances and liabilities can materialise.

4.4 In light of the responses to the CfE, we consider that it will be helpful to explicitly define some alternative regulatory frameworks that might *hypothetically* apply to the price control remuneration of corporation tax under a system of RAB-based price controls involving a pre-tax WACC allowance. We have identified the following:

Table 4.1: Allowance for corporation tax in a pre-tax WACC

Framework	Regulatory Interpretation
Type A	<p>If the regulated company's tax liability in a specific year is less than its implicit allowance for corporation tax in that year, the company's investors should retain the full value of the difference (in the long term). The difference can be viewed as legitimate outperformance for which investors are entitled to the full benefit. If in subsequent years the company's tax liabilities increase, price control determinations should not take any account of the historical periods when the company's tax liability was less than the implicit allowance. The allowances for corporation tax determined at each price control review (whether implicit or explicit) would be set on an entirely forward-looking basis without reference to historical allowances (and how they were set) or historical liabilities.</p>
Type B	<p>The remuneration for corporation tax using a pre-tax WACC approach is viewed as an approximation that does not necessarily align closely with corporation tax liabilities on an annual basis or within a single price control period. If the regulated company's tax liability in a specific year is less than its implicit allowance for corporation tax in that year, the company's investors might benefit from the difference to some degree. But there is also a recognition that there may be other years in which the company's tax liability is higher than the implicit allowance and that investors may bear a funding shortfall relative to the implicit allowance in those years. Whether the price control funding for corporation tax is sufficient or appropriate relative to the regulated company's (or a notional efficient company's) tax liabilities should be viewed over a long-term time horizon and cannot be fully assessed by looking at individual years or short periods of time in isolation.</p> <p>The regulated company's investors should not expect to retain the value of any under-spend against the implicit allowance for corporation tax while also being protected against potential over-spends against the implicit allowance, at least insofar as the under-spends and over-spends are connected (e.g. connected via timing differences between implicit allowances and tax liabilities that relate to what capital allowances are available to, and claimed by, the regulated company at specific points in time).</p>
Type C	<p>If the regulated company's tax liability in a specific year is less than its implicit allowance for corporation tax in that year, this is not viewed as a legitimate source of funding or out-performance for the regulated company and its investors to retain over the long terms. It is reasonable for the regulator to take steps to transfer to customers any economic benefit of tax liabilities being less than implicit allowances that have accrued to investors.</p>

- 4.5 The differences in the regulatory framework between types A, B and C above matter considerably from a regulatory policy perspective for the purposes of GD29.
- 4.6 For instance, if we know that type A has applied to PE and KE historically, there is no basis for policy options from the CfE that involve specific action to address risks of customers paying twice for corporation tax (i.e. options 2, 5, 6 and 7). Similarly, if type A has applied it does not make sense to talk about funding for future corporation tax liabilities that may be stored in the TRV.
- 4.7 In contrast, if the historical regulatory framework has been of type B, there are clear risks of customers paying twice under a move to a post-tax WACC approach without transitional measures, and policy options 2, 5, 6 and 7 might be appropriate to consider. There is also a question of whether any differences between the implicit allowance and actual tax liability might be captured in the TRV, given the impact of the profile adjustment. If framework type B has applied, then it may be necessary to carry out historical modelling of historical corporation tax liabilities against implicit allowances for corporation tax when considering a potential move to a post-tax WACC approach.
- 4.8 In aspects of their submissions, PE and KE seem to have adopted the position that regulatory frameworks applicable to PE and KE since licence award have been of type A. For example, PE's submission makes references to outperformance in relation to corporation tax, the role of outperformance in an incentive-based regulatory framework and the CMA's decision in relation to the UR's proposed retrospective adjustments for outperformance in the 2012 PGNL case. And PE's response (page 38) states the following which aligns with framework type A and conflicts with framework type B:
- “Even if there were years where the implicit tax allowances exceeded the actual taxes paid in that year, this amount should not be viewed as available to fund future (or previous) tax liabilities.... There has never been any statement by UR that historical over-funding of tax allowances would be used in this way, nor would doing so be typical regulatory practice particularly with regard to predictability and stability of the regulatory regime”*
- 4.9 In their responses to the CfE, PE and KE do not provide direct evidence to support the position that the historical regulatory framework A applied to these companies. They point to a lack of evidence to support the applicability of framework type B. In addition, PE and KE refer to cases where other UK regulators have moved to a post-tax WACC without transitional measures to tackle risks of customers paying twice.

- 4.10 Our current view, based on the evidence we have seen so far, is that: (a) framework type B is a reasonable and appropriate characterisation of the regulatory framework that has applied to PE and KE in the period since licence award to date; and (b) it is reasonable to view framework type B as having applied to PE and KE over that period.
- 4.11 That view was reflected in the CfE (e.g. see discussion of alternative approaches to remuneration of corporation tax in chapter 2 of the CfE and discussion of concerns about customers paying twice in chapter 4).
- 4.12 In addition, that view is reflected in past statements by the UR relating to the treatment of tax for the PE and KE price controls. For example, our GD17 draft determinations from 2016 included the following statement, which seems more consistent with regulatory frameworks type B than either type A or C (emphasis added):³ **“A change in how the UR makes allowances for tax with the price controls for PNGL and FE would involve making a calculation for any pre-funding received and would involve significant computational difficulties, including how the profile adjustment has impacted on allowances.”**
- 4.13 Furthermore, that view is reflected in work carried out in other UK regulated sectors where consideration was given to a change to a post-tax WACC. For example, a consultancy report from 2006, in the context of the cost of capital for airport price controls considered different approaches to the treatment of taxation and said the following.⁴
- “In Q4, tax was treated as an underlying long-term cost, reflected in the statutory rate of corporation tax. This approach reflects the fact that any timing differences between regulatory and statutory allowances for capital expenditure and depreciation would be balanced out over time, and that a company’s tax burden will be close to the statutory level in the long term.
The alternative method aims to track the actual profile of taxation payments more closely over time....”
- “In moving to a post-tax approach, if that approach were to be adopted, account would also have to be taken of the point made by the Competition Commission that “overrecovery” of tax costs from customers in one control period should be offset by “underrecovery” in subsequent years. Changing the method used would carry this risk. It could, in principle, be avoided by taking into account past benefits in modelling the tax costs under an effective tax rate approach, although the calculation would be complex.”
- 4.14 Nonetheless, in light of the responses to the CfE from PE and KE, which have taken a different view on these issues, we have decided to carry out a further assessment of the regulatory frameworks that have applied to

³ [UR \(2016\) Price Control for Northern Ireland’s Gas Distribution Networks GD17 Draft Determination, page 238.](#)

⁴ Europe Economics (2006) “CAA’s initial price control proposals for Heathrow, Gatwick and Stansted airports: Supporting paper XII Cost of capital – policy framework”, paragraphs 3.4 and 3.12.

PE and KE in the past before we make a policy decision on how to remunerate corporation tax for the GD29 price controls.

Plan to collect and assess evidence relating to the historical regulatory framework for PE and KE

- 4.15 We plan to carry out further research into evidence that can inform us on which of the three framework types above best represents the historical regulatory framework for PE and KE. This will include (but not be limited to) consideration of how a reasonable, competent and well-informed regulatory practitioner would have viewed the regulatory framework in the past (e.g. around the time of the 1996 agreement in the case of PE).
- 4.16 Our view is that potential information sources for the research are likely to be as follows:
- Information on the price control framework applicable to corporation tax that is available from documents relating to the original licence award processes for PE and KE.
 - Subsequent information from Ofreg or the UR which informs on the regulatory framework that had applied historically to PE and KE in relation to corporation tax.
 - Any contemporaneous explanation from Ofreg or the UR of the price control approach or wider regulatory framework applied to PE and KE in relation to corporation tax.
 - Information from Ofreg or the UR of the price control approach or wider regulatory framework applied to other regulated companies in Northern Ireland where these were remunerated via a pre-tax WACC.
 - Information from other UK regulators on the historical treatment of corporation tax allowances and liabilities under a pre-tax WACC approach.
 - Information from regulatory practitioners (e.g. consultant reports) on the established UK regulatory approaches to corporation tax remuneration under price controls involving a pre-tax WACC.
 - Documents produced by PE or KE (or their investors) that inform on how they perceived the regulatory framework for these companies to operate or have operated in the past. This might include submissions to past regulatory processes or internal documents (e.g. research and analysis produced as part of due diligence exercises relating to ownership transactions).

- Consideration of the extent to which each of regulatory framework types A, B and C might be viewed as reasonable in the context of historical UK regulatory practice.
- 4.17 We plan to carry out further research and analysis drawing on the areas above and make an overall assessment that takes account of a range of evidence. We will give greater weight to evidence that we consider most pertinent to the correct understanding of the historical regulatory framework of PE and KE.
- 4.18 We will need to take a proportionate approach to the research and recognise that there may be limitations in what information is available for review.
- 4.19 Our current view is that information on the historical regulatory approach to other aspects of price control allowances (e.g. operating expenditure or capital expenditure) is considerably less relevant than information on regulatory approaches to corporation tax. We do not plan to prioritise this information in our work, but if stakeholders consider there is important information in this area we welcome specific evidence that we can bring into our assessment.

Evidence from the changes to a post-tax WACC for other UK regulated companies

- 4.20 In their responses to the CfE, PE and KE referred to examples from UK regulatory precedent of cases where regulators made decisions to move from a pre-tax to post-tax WACC approach without any specific transitional measures to protect customers against risks of paying twice. PE's response placed considerable emphasis on this, noting that adjustments to the framework for tax allowances have been considered for 52 regulated companies, of which 51 transitioned with no retrospective adjustments.
- 4.21 In considering these examples, and more broadly, we see value in seeking to separate information on: (a) the regulatory frameworks that have applied to companies under a pre-tax WACC approach; and (b) policy decisions on whether and how to move away from the pre-tax regulatory framework and implement a post-tax WACC approach.
- 4.22 While a more detailed review of historical regulatory documents might provide information on (a) and (b) above, the information contained in PE's response seems to relate primarily to decisions made in the past by UK regulators in relation to movement away from a pre-tax framework; that information does not inform directly on the details of the regulatory

frameworks that applied in the past, before the change in approach. While some inferences might be made, caution is needed.

- 4.23 For instance, we do not consider that it is safe to base the understanding of the historical regulatory approach to corporation tax in a regulated sector (e.g. type A versus type B above) on the choices made by a regulator in moving to a new approach. Regulatory decisions can be affected by a range of factors, which may differ across regulated companies and sectors, and regulators may prioritise different things at different points in time. The fact that a specific regulator moved from a pre-tax WACC approach to post-tax WACC approach without any transitional measure to address double counting risks does not by itself prove that double counting risks did not exist in principle (or that framework type A applied in the past in that sector).
- 4.24 This issue is especially relevant when considering the price controls for PE and KE where the historical profile of revenues over time relative to costs (due to developing a new network and the associated regulatory arrangements) means that the potential scale of any double counting risks may be greater than for a more established utility company.
- 4.25 Wider UK precedent on the moves to a post-tax WACC is relevant. But our view is that a more direct assessment of the historical regulatory framework for PE and KE is needed before we move on to make a choice between policy options.

The scale of implicit allowances for corporation tax

- 4.26 We now turn to issues relating to the scale of any implicit allowances for corporation tax provided under historical price controls for PE and KE. This is relevant to the way that the historical regulatory framework should be understood (e.g. type A, B or C above). It is also relevant as an input to the modelling, discussed in chapter 5, to understand the potential scale of differences between historical allowances for corporation tax and historical corporation tax liabilities.
- 4.27 There seems to be acceptance in the CfE responses from PE and KE that the allowed return since the start of the licence periods has been set on a pre-tax basis. Furthermore, for the period from GD17 onwards, there is clear information from the WACC calculations used for our final determinations that enable an implicit allowance to be calculated. This is acknowledged by both companies in their CfE responses, with the KE response noting that “From GD17 onwards, it may be possible to infer a notional implicit allowance by comparing the pre-tax and post-tax cost of equity.” Meanwhile, the PE response includes calculations comparing tax allowances and liabilities over the 2017 to 2028 period, according to the

methodology outlined by the UR in the CfE. However, both companies express reservations around the relevance of any historical comparison exercises.

- 4.28 In relation to the period before GD17, there is less direct evidence on the scale of any allowances for corporation tax within the pre-tax allowance for the cost of capital.
- 4.29 PE's response to the CfE (page 11) identified a number of reasons why, at the time of the original agreement in 1996, "all parties involved expected Phoenix to pay no taxes for the foreseeable future for several reasons". These reasons include the knowledge that Phoenix would be constructing a greenfield gas network with zero starting customers and the way that the capital allowances regime worked at the time.
- 4.30 However, that does not answer the question of whether the cost of capital allowance from 1996 to 2016 (i.e. before GD17) included any material implicit allowances for corporation tax.
- 4.31 Our current understanding is that the standard approach in UK regulatory practice for allowing for corporation tax under a pre-tax WACC is that the prevailing corporation tax rate is used to calculate an allowance for corporation tax liabilities. Under this standard approach there is recognition that the calculation is a simplification, including in relation to the *timing* of tax liabilities (the calculation does not take any direct account of the impact of the capital allowance regime on the profile of tax liabilities over time). This simplified approach is consistent with regulatory framework type B above (for example), where the allowance for corporation tax is viewed as being on a long-term basis but not necessarily expected to align with tax liabilities in the short term.
- 4.32 The 1997 MMC report on the NIE price control provides an example of the calculation of the adjustment for corporation tax, under a pre-tax WACC approach. This document is informative of the MMC's and Ofreg's regulatory practice at the time. The MMC scaled up the post-tax WACC by 16.25%, which reflected the combination of (a) the prevailing statutory corporation tax rate (33%) and (b) an adjustment to take account of tax credits available to shareholders on dividends (these applied at the time but were subsequently withdrawn as part of changes to UK tax regime).⁵ The MMC explained that the tables setting out WACC in its chapter on the cost of capital incorporated "the simplifying assumptions, used in previous MMC inquiries, that companies pay corporation tax at the

⁵ Monopolies and Mergers Commission (1997) *Northern Ireland Electricity plc A report on a reference under Article 15 of the Electricity (Northern Ireland) Order 1992*.

current rate and that all profits are distributed as dividends (dividend cover of 1).⁶

- 4.33 This approach to allowances for corporation tax under a pre-tax WACC is based on economy-wide inputs (e.g. statutory corporation tax rates and, where applicable, tax credits affecting shareholder dividends). It does not take account of the tax position of the regulated company which is affected by both the statutory corporation tax rate and company-specific factors (e.g. scale of capital allowances and in turn taxable profits).
- 4.34 Under this standard approach, even if there was knowledge that PE would face zero or low corporation tax rates in earlier years of network build, this would not lead to a lower pre-tax WACC, and to lower (or zero) implicit allowances for corporation tax, in those years.
- 4.35 There may, however, be exceptions to this standard approach, where an alternative, and more company-specific, approach to the pre-tax WACC calculation has been used, with the tax rate used in that calculation set in a way that takes account of impact of capital allowances on the time profile of tax liabilities for the company concerned.
- 4.36 Given these issues, we plan to assess whether the information available indicates that the pre-tax WACC for PE and KE included an allowance for corporation tax reflecting the statutory corporation tax rate at the time (potentially adjusted for dividend tax credits where applicable) or an allowance based on some lower rate (potentially zero) that took account of the scale and timing of capital allowances for these companies.
- 4.37 We plan to draw on similar sources of information as indicated above to inform this aspect of the review.
- 4.38 While there might not be a detailed breakdown of the pre-tax WACC for the initial licence period for PE and KE, our view is that there is value in further work to gather and assess the evidence that is available (e.g. on prevailing regulatory practice).
- 4.39 We consider that PE's response to the CfE risks under-stating the evidence that is available (or likely to be available) on the matters discussed above.
- 4.40 For instance, in its CfE response (page 10) PE said that it had not identified any evidence of a specific methodology or calculation of how the 7.5% pre-tax rate of return was agreed in 2006 and that (page 28): "it is not possible to isolate or reconstruct a specific "tax wedge" embedded within the historic headline return". Furthermore, PE's response (page 34) states

⁶ Monopolies and Mergers Commission (1997) *Northern Ireland Electricity plc A report on a reference under Article 15 of the Electricity (Northern Ireland) Order 1992, paragraph 9.28.*

that: “there is no indication that the past regulatory framework and allowances for Phoenix, since its inception in 1996, took account of corporation tax allowances or that these were modelled or calculated in the context of the regulatory framework and returns applicable to Phoenix from 1996-2016”.

4.41 However, in its submissions to the Competition Commission’s 2012 PGNL case, PE provided a projected real pre-tax cost of capital for 2012/13 which clearly includes a corporation tax wedge / allowance calculated using the prevailing statutory corporation tax rate of 24%.⁷ This seems to indicate that, at least at the time of the 2012 Competition Commission case, PE viewed the pre-tax WACC for the initial licence period as including an implicit allowance for corporation tax which was aligned with the statutory tax rate. The figures provided by PE to the Competition Commission in 2012 would not make sense if, as suggested in PE’s response to the CfE in 2026, there was no indication that there was an allowance for corporation tax in the pre-tax WACC applicable to the 1997-2016 period.

4.42 This evidence from 2012 reinforces the value of a more thorough review of historical information, before proceeding to consider policy options for GD29.

⁷ [Competition Commission \(2012\) PGNL price determination, page 7-21, table 7.2](#)

5. Modelling corporation tax allowances and liabilities

- 5.1 As indicated in chapter 3, we propose to carry out financial modelling relating to corporation tax that can be used to: (a) inform the policy decision on the approach to remuneration of corporation tax liabilities for the GD29 period; and (b) where applicable, support the implementation of the selected policy option.
- 5.2 We discuss in this chapter a number of issues, which are prompted in part by consideration of the CfE responses from PE and KE. We take the following issues in turn:
- Contribution of the financial modelling.
 - Time period of the modelling.
 - Estimation of implicit allowances for corporation tax.
 - Notional company versus actual company tax liability.
 - Information from PE and KE tax submissions.
- 5.3 Further to the points discussed in this chapter, we highlight that in the interests of proportionality, we may need to make some simplifying assumptions and approximations for the purposes of the modelling.
- 5.4 As a more general point, we consider that any uncertainties or limitations in the modelling should be taken into account in deciding what policy option to choose for the approach to remuneration of corporation tax at GD29.

Contribution of the financial modelling

- 5.5 The financial modelling we envisage would compare estimates of the historical allowances for corporation tax in the price controls up to and including GD23 with estimates of corporation tax liabilities for PE and KE in this period (as discussed further below, we envisage that the estimated liabilities would be on a notional company basis).
- 5.6 If we assess the historical frameworks for PE and KE as being of type B from chapter 4, then in determining the way to remunerate allowances for corporation tax for GD29, we would want to understand the extent to which the price control framework has already provided funding for corporation tax allowances that may help offset tax liabilities in the future (and in turn the risks of customers paying twice in the event of a move to

a post-tax WACC approach). In that scenario, the financial modelling envisaged above would be an input to our broader policy assessment of whether to move to post-tax WACC and, if so, whether there should be some measures in place to address risks of customers paying twice (and indeed risks of the regulated companies being under-remunerated). For instance, in that scenario we would expect the estimated scale of differences between the historical allowances and modelled tax liabilities to be a relevant consideration as to whether such measures are appropriate.

- 5.7 If the policy decision is to move to post-tax WACC while taking measures to address risks of customers paying twice, the envisaged financial modelling would be an essential input to the implementation of the measures under certain policy options (e.g. under policy options 2, 6 and 7 from the CfE).
- 5.8 Furthermore, even if we decide to move to a post-tax WACC approach without any transitional adjustments (i.e. policy option 4 from the CfE), there will be a need to model the taxable profits of PE and KE, on a notional company basis, from the start of the GD29 period onwards. The taxable profits for the notional company at the start of that period will in turn depend on the capital allowances available (and assumed to be used) historically, and on the size of any tax losses carried forward. It is not possible to simply start from scratch and adopt a forward-looking assessment because the corporation tax a company pays in one year is affected by factors such as: the capital allowances arising from expenditure in previous years; the extent to which it has used the available capital allowances in those years; and the scale of any historical tax losses that might be carried forward to offset future tax liabilities.
- 5.9 While there are some figures for these historical elements within the GD23 financial model, that model was used to assess financeability within the context of the GD23 price control framework and any modelling of notional company tax liabilities at GD23 was not used to set allowances for tax at GD23. We would want to review and verify the inputs and assumptions used to model notional company tax liabilities before using them for setting corporation tax allowances for the GD29 period.

Time period of the modelling

- 5.10 We propose to model the corporation tax allowances, and notional company tax liabilities, for each of PE and KE over the full period since the price controls and licence arrangements began.
- 5.11 This approach reflects the discussion in chapter 3 For example, under regulatory framework type B above, it follows that an assessment of the

full historical time period would be relevant to assessing whether additional price control allowances for corporation tax are needed from GD29 onwards (if a pre-tax WACC is retained). Similarly, if framework type B applies, and there is to be a move to a post-tax WACC approach, this full historical modelling would be relevant to inform on the potential need for (and implementation of) transitional measures to prevent customers paying twice.

Estimation of implicit allowances for corporation tax

- 5.12 In the CfE we provided an illustration of how, under a pre-tax WACC approach, the implicit allowance for corporation tax can be calculated (see pages 15-17 of the CfE).
- 5.13 The calculation of implicit allowances is relatively straightforward in cases where the pre-tax WACC has itself been calculated by first estimating the post-tax cost for equity and then calculating the pre-tax cost of equity that makes allowance for corporation tax on profits. This is the case for PE and KE in the period from GD17 onwards.
- 5.14 For the period before GD17, and subject to further review of the historical evidence, there may not exist an explicit breakdown of the pre-tax WACC that allows a direct calculation of the implicit allowance for corporation tax.
- 5.15 In their responses to the CfE, PE and KE did not identify evidence on how the initial pre-tax WACC was calculated, with the PE response stating that “neither the Department nor UR specified an implicit tax allowance over the period from 1996 to 2016. Furthermore, there are no price control models containing the necessary data to calculate this.” The KE response adds that “prior to 2016, allowed returns were not estimated using a component-based WACC methodology.
- 5.16 In these circumstances, we plan to produce estimates of the implicit allowance, by drawing on the evidence that is available. We plan to draw on evidence collated through the process outlined in chapter 4 above, looking for information on the original licence award and price controls processes for PE and KE and looking at wider regulatory practice.
- 5.17 For example, we can look at the pre-tax WACC calculations made for other regulated companies at a similar point in time that do provide an explicit breakdown of the calculation that enables the corporation tax element to be identified.
- 5.18 Furthermore, we can consider potential adjustments for specific factors that differentiate PE/KE from those comparators. These include for example:

- The overall level of pre-tax WACC for PE and KE was set at a relatively high level compared to that for other regulated utilities at the time, in recognition of the higher level of perceived risk.⁸
- Relating to the risk faced by equity and debt investors in PE / KE at the time, it may be appropriate to assume a notional gearing in the pre-tax WACC calculation that is lower than is seen for more established utility companies. There may be evidence to inform the gearing assumption from documents produced as part of original licence award and from the company's actual gearing during the initial licence period.

- 5.19 In addition to using evidence from comparator companies, there might be evidence available from documents produced subsequent to initial licence award. For example, in the 2012 Competition Commission case, PE submitted to the CMA a pre-WACC breakdown for 2011-12 that includes a specific element for corporation tax.⁹
- 5.20 We will also consider whether to estimate the implicit allowance for corporation tax for the period before GD17 using more than one method, data source or set of assumptions, rather than using a single approach.
- 5.21 We recognise the evidential challenges of estimating implicit tax allowances prior to GD17 and will take this into consideration when interpreting modelled results. Nonetheless, our view is that the challenges discussed above do not remove the value of attempting a proportionate estimation exercise using the best available evidence.

Notional company versus actual company tax liability

- 5.22 In developing the modelling, there is a choice between making the following comparisons over the historical period:
- (i) Comparison of the GDN's actual corporation tax liability against the estimated implicit allowance for corporation tax.
 - (ii) Comparison between a notional GDN tax liability against the estimated implicit allowance for corporation tax.
- 5.23 Under our proposed approach, our primary interest would be (ii). This fits with the broader regulatory practice of setting price controls by reference to a notional efficient company (more specifically, a notional efficient version of the specific regulated company under consideration).

⁸ [See discussion in Competition Commission \(2012\) PNGL price determination, pages 7-4 to 7-18.](#)

⁹ [Competition Commission \(2012\) PNGL price determination, page 7-21, table 7.2](#)

- 5.24 Information on the actual company tax is likely to be a useful input to the modelling of a notional company's corporation tax liability. But it could be misleading and inappropriate to focus the regulatory assessment on a GDN's actual tax paid.
- 5.25 The use of a notional company for the financial modelling allows for intentional and reasonable differences between the modelled company (e.g. for corporation tax liabilities) and the actual company. However, care is needed to determine how the notional company should differ from the actual company and where it should be aligned with it.
- 5.26 At this stage, we have identified a number of features in respect of which the notional company might differ from the actual company:
- Standalone licensee versus company within a wider corporate group.
 - Notional versus actual company gearing.
 - The historical costs of the notional company.
 - The extent to which available capital allowances are used.
- 5.27 We propose to consider, for each of these features, whether the notional company should be assumed to differ in a specific way from the actual company, or whether it is appropriate to align the notional company with the actual company. We provide a preliminary discussion of these issues in the subsections that follow.
- 5.28 For some other features, such as the notional company being a licence gas distribution company, the configuration of its network infrastructure and the size of its customer base, we have not identified grounds to define the notional company differently from the actual company.
- 5.29 In its CfE response, KE raises concerns in relation to the UR using a "mix-and-match" approach to the role of actual and notional company data for financeability analysis. The approach we envisage is intended to allow for proper consideration of whether actual company data or notional company data should be used for the notional company, across a number of relevant areas. We also welcome stakeholder input on how the notional company should be specified.
- 5.30 In considering these issues we will take account of the way modelling has been done in the past for the financial modelling of the GDNs (e.g. for financeability assessment for GD17 and GD23). But we consider it necessary for a more detailed consideration of the modelling inputs and assumptions for the purposes of deciding on the appropriate way to remunerate corporation tax for GD29.

Standalone licensee versus company within a wider corporate group

- 5.31 As reflected in the responses to the CfE from PE and KE, the companies licensed for gas conveyance are (or have been) part of broader corporate groups. In this context it is possible that the actual tax liability for one of the GDNs over this period has been affected by historical choices that benefited other companies within the corporate group.
- 5.32 For instance, if there were historical periods where PE (or its predecessors) made a taxable loss, that loss might have been used to reduce tax for other group companies, and would not be available to reduce the tax liability of PE in subsequent periods. Furthermore, there may be cases where losses from other group companies have been used to reduce the tax liability for the GDN business. Linked to this issue, in its CfE response, KE notes that “historic tax paid was determined on a consolidated group basis, reflecting a corporate structure that included multiple holding companies and, until recently, an energy retail subsidiary”, while PE noted that as part of a group structure, tax liabilities may be settled in different ways.
- 5.33 Furthermore, even within the licenced entity there may be economic activities outside of the price control scope which give rise to tax liabilities or tax payments, but which should not be taken into account for price control purposes.
- 5.34 Given these issues, we propose that the financial modelling of historical corporation tax liabilities is done for a notional standalone company whose activities are limited to those covered by the price control framework, rather than a company that is part of a corporate group which looks to optimise tax liability on a group basis or which carries out other business activities outside the scope of the price control. This is a standard assumption for price control financial modelling.
- 5.35 An implication of this approach is that if this notional company incurs a tax loss in a specific year (i.e. modelled taxable profit is negative), this would be carried forward and would be available (subject to any constraints under the applicable tax rules) to be used to offset the notional company’s corporation tax liability in subsequent years (e.g. rather than a tax loss being used to reduce tax for other group companies).

Notional versus actual company gearing

- 5.36 The level of debt relative to the TRV (i.e. regulatory gearing) will have a direct impact on the notional company’s tax liabilities, as the costs of debt finance can be deducted as part of the calculation of taxable profits. We will need to consider what level of gearing to assume for the modelling,

especially in cases where the gearing of PE and KE has differed from the notional gearing assumption used for setting the price control (where such an assumption has been made).

- 5.37 The appropriate approach to gearing for the modelling is likely to depend on how the historical regulatory framework is assessed, following the work envisaged in chapter 3.
- 5.38 Under regulatory framework types A and B, our initial view is that the notional gearing would be more relevant to the modelling of notional company tax liabilities than actual gearing. Under each of these cases, we have not identified a reason for notional company gearing used for the financial modelling of historical corporation tax liabilities to differ to that used when setting the price controls in the past.
- 5.39 In contrast, under framework type C, any reductions to corporation tax that have been achieved via the regulated company operating at higher gearing than the explicitly stated notional gearing assumption would be viewed as something that should be passed on to customers. In the case, modelling corporation tax liabilities using actual gearing seems more relevant as it would help identify differences between implicit allowances for corporation tax and the tax liabilities for a company with actual company gearing.
- 5.40 For earlier price control periods, there may not be an explicit regulatory assumption on notional gearing, and we may need to use an estimate for the purposes of estimating the implicit allowance for corporation tax in that period (e.g. based on actual gearing or the assumptions used for other price controls). As above, the appropriate assumption is likely to depend on the regulatory framework type: for types A and B, our initial view is that we would use the same gearing assumption for the modelling of corporation tax liabilities as for implicit allowances; for type C, it might be more appropriate to use actual gearing for the modelling of corporation tax liabilities.

The historical costs of the notional company

- 5.41 As in the case for gearing, the level of historical costs to assume for the notional company is likely to depend on how the historical regulatory framework is assessed, following the work envisaged in chapter 3.
- 5.42 Under regulatory framework types A and B, our initial view is that it would be appropriate to seek to align the notional company's historical costs with the aggregate allowances that have applied under the price control framework rather than with the outturn costs of the GDNs (insofar as these differ). The allowances to use would be those that applied after any adjustments for uncertainty mechanisms, cost-sharing or delivery (e.g.

adjustments to allowances for outputs not delivered). On this hypothetical basis the notional company will be assumed to neither out-perform nor under-perform financially in relation to expenditure allowances.

- 5.43 For the modelling of the capital allowances (and in turn corporation tax liability) of the notional company we would also need assumptions on the amount of its expenditure falling under different tax pools. Under a pre-tax WACC approach, this is not something that would have been determined as part of the price control decision. We propose to use information from PE and KE on the proportion of capital expenditure allocated to each tax pool each year to allocate the relevant price control allowance between tax pools.
- 5.44 Under regulatory framework type C, our initial view is that actual company costs (insofar as these are attributed to the standalone regulated business) would be relevant for the notional company's costs, both in terms of the overall level and the allocation across tax pools.

The extent to which available capital allowances are used

- 5.45 Under UK corporation tax rules, a company does not need to use (or claim) its maximum available capital allowances in a specific year when calculating its taxable profit. It can choose what amount to use in a specific year, with the remainder available to help reduce its tax liability in subsequent years.
- 5.46 In modelling the notional company's tax liability, we would need to make an assumption on whether or not the notional company uses its maximum available capital allowances each year.
- 5.47 Our understanding is that it would be simpler, and consistent with other regulatory practice, to assume that the notional company does use the maximum available capital allowances each year.
- 5.48 However we consider that it would be helpful to understand whether this was done in practice by PE and KE and, if not, the reason for this (e.g. due to wider corporate group considerations that would not apply to a notional standalone company or due to factors that would also apply to a notional efficient GDN).

Information from PE and KE tax submissions

- 5.49 We have asked PE and KE for a full set of historical tax returns for the licenced companies. This should provide a more detailed set of information on the actual company tax affairs than is available from the companies' regulatory accounts.

- 5.50 As indicated above, for some aspects of the modelling of notional company tax liabilities we may draw directly on information on the tax submissions of these companies (e.g. for the allocation of notional company capital expenditure allowances between tax pools).
- 5.51 In addition, the more detailed information in the tax returns may provide insight and guidance on the appropriate modelling of notional company tax liabilities. This can contribute to a sense check of the modelling using real-world tax information.

6. Policy considerations

- 6.1 This chapter sets out our current thinking on the policy considerations that we plan to take into account as part of the decision-making process.
- 6.2 For complex and potentially high-impact regulatory policy matters, it can be helpful to approach the evaluation between alternative regulatory policy options by considering the risks that may arise. There may be no perfect option that eliminates all types of risk, but it can be helpful to consider how options differ in terms of their likely impacts on different types of risk. The benefits of option A compared to option B can be seen in terms of the areas for which option A is lower risk than B. A focus on risks also acknowledges that in some cases the impacts of a specific option may be subject to uncertainty.
- 6.3 In setting out an initial view of relevant risks to consider we have drawn on issues raised in the CfE and the responses to this. This includes the “assessment criteria” used in PE’s preliminary assessment of options,¹⁰ as well as broader comments on the benefits and drawbacks of specific options in the responses. We found the criteria from PE to be useful overall and to overlap significantly with our own thinking.
- 6.4 We set out in this chapter the risks that we consider relevant to consider. These are not necessarily exhaustive and we welcome stakeholder feedback.
- 6.5 We have grouped the risks into a number of categories, as reflected in the subsections that follow, covering:
- Value for money for gas customers;
 - Financeability;
 - Stakeholder confidence in the regulatory regime;
 - Promotion of an efficient and co-ordinated gas industry; and
 - Implementation issues.
- 6.6 While there are interactions and overlap between different risks, it can nonetheless be helpful to organise specific risks into a number of higher-level policy themes. We welcome feedback on our categorisation of risks and the associated policy themes.

¹⁰ PE response to CfE page 28-29

- 6.7 In their response to, PE and KE gave emphasis to concerns about some regulatory policy options for corporation tax treatment damaging investor confidence and ultimately increasing financing costs for consumers; and concerns about undermining financeability. These concerns are captured in the potential risks identified below under the headings of financeability, stakeholder confidence in the regulatory regime and value for money for gas customers.
- 6.8 The identification of potential risks is intended to provide a basis for work to consider the choice between the regulatory policy options. We take no view, for the purposes of this exercise, on whether any of the regulatory policy options involve material risks along each of the areas identified. Instead, our view is that it would be prudent to consider these risks given the complexity and potential significance of policy decisions in this area.

Value for money for gas customers

- 6.9 As a starting point, there are a number of considerations that relate to the risks of gas distribution tariffs not providing value for money to customers, or not being reasonable for customers to pay. These risks include the following:
- Risks that price control allowances for corporation tax (whether implicit or explicit) are excessive (e.g. if there are legitimate concerns about customers paying twice as a consequence of a change in the way that corporation tax is remunerated).
 - Risks that price control allowances for the GDN cost of capital (WACC) increase as a consequence of the UR's decision on the GD29 tax treatment (e.g. if this contributes to increased non-diversifiable risk from changes to how the regime is perceived).
 - Risks of unfairness over time between different generations of customers as a result of how price controls and tariffs are determined.

Financeability

- 6.10 There are potential risks to notional company financeability, which might be understood as risks of setting price controls that would not enable a notional efficient company to finance its activities while meeting obligations (including obligations on investment grade credit rating where applicable). This risk could arise for example from:
- Potential for the price control remuneration for corporation tax liabilities to be insufficient.

- Potential for price control allowances for the cost of capital to be insufficient (e.g. given risks faced by a notional efficient company).

6.11 In addition to the notional company perspective, it may be relevant to also consider risks to actual company financeability.

Stakeholder confidence in the regulatory regime

6.12 There are also potential risks of adverse effects that concern the potential impacts of the UR's decision-making on the GD29 tax treatment on perceptions of the regulatory regime for the GDNs, regulated companies in Northern Ireland or the UK regulatory regime more widely:

- Risks of adverse effects on the perceived riskiness of the regulatory regime (e.g. from the perspective of investors or credit rating agencies), leading to increases in the cost of capital.
- Risks of adverse effects on the credibility and effectiveness of the financial incentives faced by regulated companies for aspects of their performance (e.g. on outcome delivery or cost efficiency).
- Risks of harm to public trust in the regulated gas sector in Northern Ireland, or the regulatory regime and utility sector in Northern Ireland more widely.

6.13 In contrast to the assessment criteria used by PE, we do not consider consistency with typical regulatory practice to be an aim in itself, as there may be case specific reasons for differences, and because a regulator needs to exercise its discretion given its statutory duties and given the context in which it is making the decision. But we recognise that such departures might be relevant to the potential risks above relative to perceptions of the regulatory regime for gas distribution in Northern Ireland.

Promotion of an efficient and co-ordinated gas industry

6.14 There might be risks to consider in relation to the UR's duty to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland. These risks may apply as a consequence of risks captured above or potentially through other channels.

Implementation issues

6.15 Finally, there are potential risks relating to implementation issues, such as:

- Risks of adverse impacts on the administrative costs associated with the price control process and wider regulatory framework.
- Risks of implementation errors or unintended consequences associated with any change of approach.
- Risks that a chosen regulatory policy options turns out to be impractical to implement.

Annex 1 – Responses to Call for Evidence questions

We have provided a summary of KE’s and PE’s responses to each of the Call for Evidence questions below. The full responses to the questions have been provided in the companies’ response documents published alongside the GD29 Approach consultation.

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

Question	Kinecx Energy response	Phoenix Energy response
<p>1. 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.</p>	<p>KE considers there are clear grounds for change. It states that a move to a post-tax WACC would better align revenue with tax liabilities in each period, reflect modern regulatory practice and improve transparency for investors and lenders.</p> <p>KE also emphasises that any change should be strictly forward-looking and that retrospective adjustments would risk undermining regulatory stability.</p> <p>KE links the need for change to financeability concerns.</p>	<p>PE supports changes to ensure adequate funding of corporation tax. It considers that the current approach risks underfunding tax liabilities and that a transition to a post-tax WACC, implemented predictably and consistently, would provide improved outcomes for customers.</p> <p>PE also links the need for change to financeability concerns.</p>

Question	Kinecx Energy response	Phoenix Energy response
<p>2. 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.</p>	<p>KE does not consider this concern justified. It states that there is no evidence of double recovery, timing differences do not imply pre-funding and regulatory precedent does not support retrospective adjustments.</p>	<p>PE similarly considers there is no justification for this concern, noting that there is no evidence of customer overpayment and that historical frameworks did not explicitly provide for tax allowances.</p> <p>For the period 2017–2028, PE estimates any potential over-funding to be approximately £2m (nominal). It considers this amount to be of low materiality relative to the risks associated with clawback and its potential impact on the stability of the Northern Ireland regulatory regime and on customers.</p>
<p>3. 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.</p>	<p>KE considers that comparing implicit allowances with actual tax liabilities would not provide meaningful evidence, citing complexity of tax arrangements, limitations arising from group structures and the ex-ante nature of price control determinations.</p>	<p>PE also considers such analysis would not be feasible and would be of limited value, stating that data limitations make robust estimation difficult, particularly for 1996–2016, and that any reconciliation of allowances and actual tax is not reliably achievable.</p>

Question	Kinecx Energy response	Phoenix Energy response
<p>4. Do you have any initial views on any of the list of policy options, or any further options that might be considered?</p>	<p>KE prefers Option 4 (post-tax vanilla WACC with explicit tax allowance), is also supportive of Option 2 (pre-tax WACC with top-up allowance), and considers other options may raise concerns regarding financeability, implementation and regulatory principles.</p>	<p>PE considers Option 4 to be the only appropriate option, in light of limited evidence of historical tax allowances, and states that other options risk increasing the cost of capital, undermining stability and harming consumer outcomes.</p>
<p>5. Are there any 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?</p>	<p>KE emphasises that future arrangements should be forward-looking and principle-based, avoid retrospective interpretation and align with regulatory precedent.</p> <p>KE also considers UR's current method to convert the determined real post-tax cost of equity to a real pre-tax allowance in one step understates the tax-uplift.</p>	<p>PE highlights risks to financeability and cost of capital, future investment in the gas network and broader decarbonisation objectives.</p>

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

Question	Kinecx Energy response	Phoenix Energy response
<p>6. 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.</p>	<p>KE accepts that an implicit allowance has existed within pre-tax returns but states that it was not explicitly modelled, cannot be reliably quantified, particularly pre-GD17, and was not intended to pre-fund future tax liabilities.</p>	<p>PE states that it has identified no evidence that an implicit or explicit tax allowance was included in returns prior to GD17, or that tax was explicitly modelled in the historical framework.</p>

Question	Kinecx Energy response	Phoenix Energy response
<p>7. 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? Please explain the rationale for your view, and if you disagree, explain an alternative calculation method.</p>	<p>KE acknowledges that a notional allowance can be inferred from WACC parameters but considers this limited in relevance and not reflective of actual liabilities.</p>	<p>PE has provided illustrative calculations using UR's methodology but does not endorse its validity.</p>
<p>8. 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?</p>	<p>KE considers this cannot be done reliably, as pre-GD17 returns were not derived using a component-based WACC and any estimation would rely on speculative assumptions.</p>	<p>PE similarly considers that there is insufficient evidence to reconstruct the tax component and that no robust or replicable estimate is possible for 1996–2016.</p>
<p>9. 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.</p>	<p>KE does not consider that differences between implicit allowances and actual liabilities should be treated as balances that can be carried forward or backward.</p>	<p>PE similarly considers that such differences should not be viewed as available to fund tax liabilities in other periods, and that doing so would conflict with regulatory practice and undermine predictability.</p>

Question	Kinecx Energy response	Phoenix Energy response
<p>10. 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 where the implicit allowance for corporation tax has historically exceeded corporation tax liabilities, is it reasonable to view TRV as including a store of funding for future corporation tax liabilities? Please explain the rationale for your view.</p>	<p>KE considers that the TRV does not contain such a store, noting that the Profile Adjustment is a tariff-smoothing mechanism and does not isolate or preserve tax-related funding.</p>	<p>PE also considers that the Profile Adjustment is unrelated to tax allowances and that there is no evidence it was intended to fund tax liabilities.</p>
<p>11. 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?</p>	<p>KE emphasises that past determinations are final and should not be revisited, and that retrospective adjustments would undermine certainty and investor confidence.</p>	<p>PE reiterates concerns that changes could increase the cost of capital, reduce investment and delay progress on network development and decarbonisation.</p>

Potential changes to the debt financeability assessment

Question	Kinecx Energy response	Phoenix Energy response
<p>12. 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 the end of the revenue recovery period, and do you think there is anything further that should be considered in this calculation?</p>	<p>KE considers that while formal assessment should focus on the price control period, longer-term visibility may be useful to identify emerging risks.</p>	<p>PE does not consider such analysis worthwhile, stating that it would rely on uncertain long-term forecasts and is not consistent with standard regulatory practice.</p>
<p>13. 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?</p>	<p>KE supports a forward-looking, period-specific approach to financeability assessment.</p>	<p>PE considers that assessments should align with credit rating agency methodologies and that regulatory approaches should remain consistent with established practice. PE also cautions against approaches that assume financeability issues can be addressed through equity injections or dividend reductions.</p>