PHOENIX ENERGY'S RESPONSE TO THE UTILITY REGULATOR'S GD29 TREATMENT OF CORPORATION TAX CALL FOR EVIDENCE

1. Executive Summary

This document contains Phoenix Energy Group Limited's ("Phoenix") response to the Utility Regulator's ("UR") call for evidence on the treatment of corporation tax, published on 19 November 2025 (the "Call for Evidence").

As part of the Call for Evidence, UR proposes seven options in relation to the treatment of corporation tax, ranging from retaining the existing pre-tax Weighed Average Cost of Capital ("WACC") (Options 1-3) to moving to a post-tax vanilla WACC (Options 4-7). Options 2,3 and 5-7 also propose transitional measures (e.g. adjustments to future tax funding, PA, TRV or determined ex-ante tax allowances) to clawback any excess historical tax allowances that Phoenix and/or Kinecx Energy may have received under the existing and previous regulatory frameworks (although this is yet to be established).

Subject to the actual approach that is adopted, Phoenix is in-principle supportive of a move to a post-tax vanilla WACC. Such approach would more closely align future revenue allowances with future tax liabilities and would bring the regulatory framework for Gas Distribution Network Operators ("GDNs") in Northern Ireland ("NI") more closely in line with the approach adopted by economic regulators in the United Kingdom ("UK"). Any decision by UR will need to be grounded in evidence and ensure the GDNs are treated fairly whilst at the same time ensuring customer impact is carefully measured.

Based on the detail included in the Call for Evidence, Phoenix considers that most of the options presented would not be appropriate and could also undermine ongoing confidence in the regulatory regime.

As with any material regulatory change, it will be important for UR to consider all relevant regulatory precedents[1] in addition to undertaking a detailed impact assessment of the options for transition. For example, a transition to a post-tax vanilla

[1] To support this, Phoenix presents examples of other economic regulators switching from a pre-tax WACC to a post-tax WACC regime as part of this document (see the Appendix).

WACC with a reduction to TRV, would be inconsistent with historical precedent (with the exception of one out of 52 transitions identified) and regulatory practice regarding the appropriateness of retrospectivity for regulatory changes (in particular where they may result in the reopening of past price control decisions).

On this basis and considering the detail in the Call for Evidence, out of the options presented, Phoenix can only currently support Option 4. This is on the understanding that this option would entail a move to post-tax vanilla WACC without any retrospective adjustments to revenues, PA, TRV or determined ex-ante allowances. Whilst being consistent with typical regulatory practice, we also believe it would not give rise to any material customer impact and should thus present an acceptable and appropriate pathway forward.

We have also taken the opportunity to highlight several areas in the Call for Evidence that remain unclear and will require further consideration. These are set out in this document and can be summarised as follows:

- UR seeks views on how to calculate past tax allowances for Phoenix.
  Phoenix has had an economic regulatory regime since 1996 reflecting its specific circumstances. As a greenfield network, the regime needed to incentivise investment and smooth the impact of such investment on customer bills by securing predictable returns over the longer term (outside of 5-6 yearly price control cycles):

    - Phoenix is not aware of any price control models that would contain the data necessary to calculate any potential historic tax allowances. Therefore, at this stage, **there is no meaningful way for it to calculate the delta between historic tax allowances and liabilities across the 1996-2016 period**. It was not until 2017 that the rate of return was determined by UR at each price control review similar to the approach taken for more mature GDNs in Great Britain ("GB"). Seeking to apply current regulatory frameworks to the period between 1996 and 2016 is therefore neither appropriate nor possible.
    - Regulatory practice does not support the introduction of changes to or the recharacterisation of the regulatory framework in a way that would have a material retrospective effect, and which would re-open past price controls agreed and accepted thus undermining certainty and predictability. Adjustments like those proposed in Options 2,3 and 5-7, which are retrospective in nature, would be out of step with the approach that other regulators in the UK (including UR itself[2]) have typically adopted when transitioning to a post-tax WACC.

[2] For NIE Networks and NI Water.

- For the period from GD17 onwards, and applying UR's own methodology/models, the delta between implicit tax allowance and actual tax paid is estimated to be c.£2m.

- The Call for Evidence refers to examples of corporation tax transitions from other regulators, but we are surprised that **it then focuses on the only example, ORR and Network Rail**,[3] where a regulator has imposed retrospective adjustments when moving to post-tax vanilla WACC. Phoenix does not consider that this example supports the introduction of transitional measures as part of a change in the treatment of corporation tax. In particular:
  - The Network Rail example **is fact specific and not comparable to Phoenix**: Network Rail had recently been nationalised and the delta between tax allowances and tax liabilities in that case was more easily identifiable and estimated to be significant at over £1.4bn. Even in this example, the retrospective adjustments only applied to one price control period, rather than the entire period that the entity had been subject to a pre-tax WACC regime.
  - **Most other regulators, including UR, have moved regulated utilities to a post-tax Vanilla WACC without any form of transitional measure or adjustment** or re-opening of previous price controls and/or regulatory frameworks. In total, adjustments have been considered for 52 regulated companies of which 51 were transitioned with no retrospective adjustments, the exception being Network Rail. Material retrospective changes of this type are therefore not common.[4] Indeed, when the Competition Commission (the precursor to the Competition and Markets Authority ("CMA")) considered this issue in the context of Phoenix's price determination in 2012, it found that once a regulator has concluded a price control, it could not revisit its decision at will.[5] This precedent has since been reaffirmed twice by the CMA, who has confirmed that regulators need to meet a high evidential threshold to justify material retrospective changes to the regulatory framework.[6]

- In further stages of consultation, in addition to providing clear evidence, it will be necessary for UR to also undertake impact assessments of the various final options

[3] https://www.orr.gov.uk/sites/default/files/om/pr08-financial-issues-let-060907.pdf
[4] See Appendix for further detail on other regulatory transitions.
[5] CC, *Phoenix Natural Gas Limited price determination,* 28 November 2012, Paragraph 9.48 onwards.
[6] See Chapter 3.2, and https://assets.publishing.service.gov.uk/media/617fd07ce90e07197483b8a9/ELMA_Final_Determination_Vol.2B.pdf and https://assets.publishing.service.gov.uk/media/60702370e90e076f5589bb8f/Final_Report_---_web_version_-_CMA.pdf.

that remain under consideration. Phoenix notes that when exercising its functions, **UR is under a statutory obligation to ensure the development of an efficient, economic and co-ordinated gas industry in Northern Ireland, including by ensuring that licence holders can finance their functions**.[7] Therefore, in addition to ensuring it has sufficient evidence to justify a particular option, UR needs to be confident that any option it eventually chooses will not have a detrimental effect on Phoenix and Kinecx Energy's financeability going forward, which could in itself run counter to the interests of customers and the development of an efficient and economic gas industry in NI.

The rest of this response explores each of these issues in more detail and is structured as follows:

- Chapter **2** sets out the history of the different regulatory frameworks that Phoenix has been subject to;
- Chapter **3** evaluates historic tax allowances and liabilities;
- Chapter **4** outlines regulatory precedent and practice;
- Chapter **5** considers the impact on financeability and investability;
- Chapter **6** evaluates the different options; and
- Chapter **7** answers the questions raised in the Call for Evidence.

The Call for Evidence covers two of NI's three GDNs, i.e. Phoenix and Kinecx Energy. The treatment of corporation tax in the regulatory model for the third GDN, Evolve, utilises a different approach and is not being reviewed. Phoenix recognises that the Call for Evidence also applies to Kinecx Energy. However, this response is written by Phoenix and therefore focusses on the impact on its business.

Phoenix would welcome the opportunity to engage directly with UR on this response and as UR develops its direction of travel in reaching an appropriate outcome for any proposed treatment of corporation tax in future price controls.

[7] Energy (Northern Ireland) Order 2003, Section 14.

2. Historical Context for the Phoenix Investment and Regulatory Framework Development

Phoenix's response to the Call for Evidence requires some understanding of its history. There are three distinct time periods of relevance:

(i) *The 1996 licence and the period from 1996 to 2006* – notably, the licence Phoenix[8] was granted in 1996 to construct the gas network, the original cashflow model, and the unique circumstances surrounding the natural gas industry in NI at that time;

(ii) *The 2006 Agreement and the period from 2007 to 2016* – notably, the modifications that were made to that licence as part of an agreement between Phoenix and UR[9] in 2006, and the introduction of the current regulatory model ("the TRV model"); and

(iii) *Regulatory Framework from 2017 onwards* – notably, the introduction of a calculated WACC as part of each price control determination from 2017 onwards.

Further detail is provided below.

2.1 The 1996 licence and the period from 1996 to 2006

Phoenix operates under a licence granted to it in 1996 for the conveyance of natural gas in NI[10]. Before the Phoenix investment, there was no existing natural gas infrastructure in NI. The task set for Phoenix was an unusual project in the UK, since it involved construction of a gas distribution network in a major, developed city.

At the time of the grant of Phoenix's licence, it was recognised that the greenfield nature of the investment presented the company with a number of specific and unique challenges not experienced by more mature privatised utilities. Most importantly, Phoenix faced the challenge of developing a network and a market for natural gas from scratch, in the knowledge that, even if successful, the investment would not be recouped for a number of years.

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[8] Licence granted to Phoenix Natural Gas Limited (a company registered in NI, No.NI026420) on 5 September 1996. The licence was assigned on 31 December 2007 to Phoenix Distribution (Northern Ireland) Limited (a company registered in NI, No. NI032809). The company name was changed to Phoenix Natural Gas Limited on 24 September 2008, and to Phoenix Energy Group Ltd on 13 October 2023.

[9] Previously Ofreg.

[10] Phoenix's original licence was a combined licence for the conveyance and supply of gas in its Licensed Area. The conveyance part of the licence allowed Phoenix to construct and operate both a transmission and distribution network in NI, and the supply part of the licence allowed Phoenix to supply gas to customers from that network.

The regulatory structure put in place by the Department of Economic Development[11] (the predecessor to the Department for the Economy) was tailored to the specific circumstances in which the investment was made. Those circumstances required the Department to take a longer-term approach to Phoenix's licence than would typically be the case for a more mature regulated utility in GB, although the fundamental principles of incentive based regulation still applied.

The licence was therefore set up on the basis of a 20-year cost recovery period ("the cashflow model"). At the heart of the licence was a structure that anticipated a significant, upfront, risky investment, and offered the opportunity to recover that investment over a period long enough to win new customers and earn a return commensurate with the risks being taken. Three features of the licence in particular reflected this regulatory structure:

a) it allowed Phoenix to earn a fixed rate of return of 8.5% (pre-tax, real) for the initial 20-year period for both distribution and transmission activities, reflecting the expected level of risk the company would face <u>on average</u> over that period;
b) the principle of 'price smoothing' (based on a real fixed average price) over that initial period delayed recovery of both cost and profit over the 20-year period (relative to more mature utilities within GB) to reflect the expected growth in volumes as new customers connected to the network; and
c) it provided a strong financial incentive to deliver efficiency improvements, whilst at the same time requiring Phoenix to meet a mandatory development plan for investment and delivering a share of the benefits of realised efficiencies to customers.

Phoenix has not identified any evidence of a specific methodology or calculation of how the 8.5% pre-tax rate of return in 1996 was agreed. Phoenix's understanding is that this rate of return represented the expected average level of risk over that initial period and was fixed for that period to provide an incentive sufficient to attract the initial investment needed to develop NI's natural gas industry from scratch. The commitment was large and the willingness of customers to make the investment to switch to natural gas uncertain. The profile of risks that Phoenix faced was heavily front-loaded given the significant early investments needed to provide the new network infrastructure. At the time, there was considerable uncertainty about whether the NI natural gas market would be successful, and the investment was made against a backdrop of an uncertain and volatile political and security situation in NI, creating additional risks and challenges in the construction and operation of the network.

[11] Phoenix's licence was granted by the Department of Economic Development. UR is responsible for regulating Northern Ireland's electricity, gas, water and sewage industries, including Phoenix.

2.2 The 2006 Agreement and the period from 2007 to 2016

By 2002, both UR and Phoenix had recognised that the initial 20-year cashflow model was not the best basis for the future development of the gas industry in NI[12]. It was common ground that a recovery period that reflected the expected economic lives of the network assets (i.e. stretching beyond the original 20-year recovery period) would help to maximise growth and development of the industry not just in Greater Belfast but across NI ensuring a fairer sharing of the initial investment cost between current and future customers. It was agreed that maintaining the status quo was not in the best interests of customers.

A regulatory agreement was finally reached in November 2006 following discussions between Phoenix, its new shareholder Terra Firma (who purchased Phoenix in 2005), and UR, and was implemented by licence modifications in 2007 (the "2006 Agreement").

In addition to moving to a longer-term recovery period, there were a number of other issues that UR revisited as part of the 2006 Agreement and reflected UR's wish to address a group of related issues as part of a single agreement - a comprehensive package covering many aspects of Phoenix's business. This included:

a) an extension of the initial cost recovery period in the licence from 20 years to 40 years (from 2006) together with a framework for recovery beyond that period, aligned to that within GB;
b) the introduction of a price control mechanism that explicitly valued the regulated asset at each price control period. In that respect the determination of the opening asset value was incorporated into the licence (as $TRV_{F,2006}$= £312.8m);
c) the establishment of the depreciation profile, which determined the period over which Phoenix could recover the $TRV_{F,2006}$ and any new capex, and the introduction of the Profile Adjustment as the mechanism to profile the recovery of revenue over a 40-year period to 2046, in line with the expected growth in volumes over that period;
d) the requirement to sell Phoenix's transmission business to a mutual company at a price effectively determined by UR;
e) introduction of ring-fencing obligations; and
f) a reduction in the rate of return for the distribution business from 8.5% to 7.5% through to the end of 2016 (at which point it would be reviewed in line with best

[12] Discussions began in 2002 between UR (then known as Ofreg) and Phoenix to agree a sustainable longer-term cost recovery model.

regulatory practice at the time), and to a blended rate of 6.25% for the transmission business until the time of sale.

Phoenix has not identified any evidence of a specific methodology or calculation of how the 7.5% pre-tax rate of return in 2006 was agreed. Phoenix's understanding is that this rate of return reflected a transfer of value to customers and was part of a package of measures agreed by UR and Phoenix. Each element of the package represented a change to Phoenix's original licence, and the calculation of each element was subject to a detailed and thorough discussion and negotiation between Phoenix and UR. Each element of the package had a value to both Phoenix and its customers, present and future, relative to the licence that was already in force, and overall value was shared in a way that was regarded at the time as fair. It also provided the basis for a stable regulatory regime going forward.

The key difference between the Phoenix regulatory models pre- and post- the 2006 Agreement is that the cashflow model (pre-2007) is based on the assumption of full recovery of costs within the 20-year period, whereas the TRV model (2007 onwards) assumes that capex will be depreciated and recovered over the regulatory life of the asset, rather than having to be recovered by the end of 2046. Where capex is not fully depreciated by the end of 2046, this is reflected in the value of TRV at the end of 2046.

The key difference between Phoenix's TRV model and the typical building block approach applied to regulated utilities in GB, is the application of a Profile Adjustment. The Profile Adjustment that was introduced as part of the 2006 Agreement is unusual in that it profiles Phoenix's revenues over a longer period (i.e. all the way to 2046), and across multiple price control reviews. Further detail on the Profile Adjustment is provided at section **3.5** but in its simplest form, the Profile Adjustment is a means of storing the difference between revenue recovered in the early years and the actual revenue allowed under the building blocks of regulation to a later period when Phoenix's customer base was significantly bigger, thereby protecting those early customers who had chosen to install natural gas in their homes and businesses and in effect sharing costs more equitably between current and future customers.

2.3 Regulatory Framework from 2017 onwards

Phoenix continues to operate under the principles of the TRV model and cost recovery formulae introduced as part of the 2006 Agreement.

The WACC has been determined by UR at each price control review since 2017, namely GD17 and GD23. In calculating the allowed cost of equity, UR, like most economic regulators in GB, used the Capital Asset Pricing Model ("CAPM") to determine the WACC from 2017 to 2028.

As part of its GD23 final determination[13] UR identified a number of issues that it considered beyond the scope of the GD23 price control determination process. One of these was further consultation on a possible change of the regulatory model for Phoenix and Kinecx Energy to take effect at the start of the next price control period, GD29. While Phoenix and UR had some exploratory exchanges on the approach to WACC as part of the GD23 review process, no changes to the use of a pre-tax WACC have been proposed or introduced. This Call for Evidence is therefore the first step in this process.

[13] Paragraph 13.5 of the GD23 Final Determination Main Document.

3. Feasibility of evaluating tax paid and tax allowances

With UR's Call for Evidence questions in mind, Phoenix has undertaken a review of the data available to it to consider the feasibility of comparing tax paid and tax allowances.

3.1 Historical rates of return

Chapter **2** outlines the history of Phoenix and identifies three distinct time periods of relevance to the Call for Evidence. In relation to the rate of return for each, Chapter **2** concludes:

(i) *The 1996 licence and the period from 1996 to 2006*

- The licence specified a fixed rate of return of 8.5% (pre-tax, real) for the 20-year period for both distribution and transmission activities.
- Phoenix has not identified any evidence of a specific methodology or calculation of how the 8.5% pre-tax rate of return was agreed in 1996. Phoenix's understanding is that this rate of return represented the expected average level of risk that was required across the initial 20-year cost recovery period and was fixed for that period to provide an incentive sufficient to attract the initial investment.

(ii) *The 2006 Agreement and the period from 2007 to 2016*

- The 2006 Agreement resulted in:
    i. the introduction of the current regulatory model (the TRV model).
    ii. a reduced rate of return for Phoenix's distribution business of 7.5% that was fixed for the remaining 10 years of the original recovery period (i.e. to the end of 2016);
- Phoenix has not identified any evidence of a specific methodology or calculation of how the 7.5% pre-tax rate of return was agreed in 2006. Phoenix's understanding is that this rate of return reflected a simple discount to the original rate of return, alongside a package of measures to recognise a transfer of value to customers as a consequence of the move towards a longer-term future regulatory regime.

(iii) *Regulatory Framework from 2017 onwards*

- Phoenix continues to operate under the TRV model introduced as part of the 2006 Agreement.
- From 2017 onwards the rate of return is determined by UR at each price control review similar to the approach taken for more mature regulated networks in GB. In calculating the allowed cost of equity, UR, like most

economic regulators, has used the Capital Asset Pricing Model (CAPM) to determine Phoenix's WACC since 2017.

3.2 Historical implicit tax allowances

The period since 1996 can be divided into two phases:

- Phase 1 - The period from 1996 to 2016 where UR has not calculated any implied tax allowances;
- Phase 2 – The period from 2017 to 2028, where UR has calculated implied tax allowances in line with the GD17 and GD23 price control frameworks.

In summary, Phoenix is only able to calculate historical (and projected) tax allowances from 2017 to 2028.

3.2.1 Phase 1: The period from 1996 to 2016

Phoenix's understanding is that the original 8.5% rate of return and the reduced 7.5% rate of return for Phoenix's distribution business were mutually agreed by the government, regulatory authorities and Phoenix's then shareholders, British Gas International, to facilitate the investment. Chapter **2** details how:

- the original 8.5% rate of return was set at this level in order to attract the investment needed to develop NI's natural gas industry from scratch. This reflected the considerable uncertainty about whether the NI natural gas market would be successful, and the investment was made against a backdrop of an uncertain and volatile political and security situation in NI.
- the 7.5% rate of return agreed in 2006 reflected a transfer of value to customers and was part of a package of measures agreed by UR and Phoenix that shared value in a way that was regarded at the time as fair and provided the basis for a stable regulatory regime going forward.

In terms of tax, 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.

It is impossible to hypothesise what, or if any, taxes were assumed by the NI government, British Gas International or any other stakeholders when the original agreement was negotiated in 1996. It is likely, however, that all parties involved expected Phoenix to pay no taxes for the foreseeable future for several reasons:

1. Given the need to construct a greenfield gas network with zero starting customers, it would have been reasonable to assume that Phoenix would make accounting losses for early years to begin with.
2. The need to develop the market and acquire customers resulted in a gradual build up in income and thereby operating profit over the 20 years period.
3. The scale of the capital investment programme over the first 10 years in particular, coupled with a capital allowance regime available at the time Phoenix's licence was granted in the mid-1990s, was significantly more generous than is the case today. This would have resulted in plentiful supply of capital allowances to undertake capital expenditure projects, thereby minimising the likelihood of taxable profits arising for a sustained period.
4. Had British Gas International anticipated that Phoenix would have taxable profit and expect to pay taxes, given the high rate of corporate tax applicable at that time, it is likely that material amounts of debt would have been raised to fund the construction of the network; this would have allowed interest payments to be offset against taxable profits. However, no debt was raised during this period as Phoenix was 100% equity funded, suggesting an expectation that British Gas also anticipated that no tax would be payable.

Furthermore, it is highly challenging to make any inferences about the tax assumptions embedded in the 8.5% (and subsequent 7.5%) rates of return on the basis of comparisons to WACCs set by other economic regulators around the same time given the unique circumstances, and risk, of the investment summarised above and detailed in Chapter **2**.

The data and methodological challenges identified for the pre-2007 period also extend into the period to 2016. Again, we have identified no evidence of a specific methodology or calculation of how the 7.5% pre-tax rate of return was determined or what tax assumptions, if any, were embedded in the 2006 Agreement. Importantly, the pushing out of income recovery beyond 2016 lessened still any tax likely to be paid pre-2016.

As a result, the years from 2007 to 2016 suffer from the same fundamental limitation as the years before 2007.

This means that a historical assessment of the implicit allowances for corporation tax from 1996 to 2016 is not possible based on the information available to Phoenix.

3.2.2 Phase 2 - The period from 2017 to 2028

To inform UR's Call for Evidence, Phoenix has reviewed its tax allowances for the period 2017 to 2028. This review used the **formula at table 3.2 of the Call for Evidence to calculate the implicit allowance for corporation tax for the period 2017 to 2028**.

For clarity, Phoenix is not endorsing this formula and has only used it to support the comparison in section **3.4** which considers its historical tax allowances and tax liabilities over the period 2017–2028.

3.3 Historical tax data availability

3.3.1 The period from 1996 to 2016

Any reconciliation of "allowed" versus "actual" tax is inherently uncertain (especially for the period from 1996 to 2016) for several reasons including:

- For a material part of the relevant period Phoenix was part of a larger group alongside transmission and supply businesses.
- UR is requesting evidence for a long-time horizon i.e. up to c. 30 years ago. Companies do not typically retain historical financial information for this length of time, particularly given they are only legally obligated by HMRC to keep this material for up to eight years (depending on the circumstances).

While regulatory and statutory accounts are available all the way back to 1996, the tax paid figure shown in the cashflow statement in any year does not necessarily represent the company's underlying tax liability. The company has a tax liability arising from its own taxable profits; however, as part of a group structure, this liability may be settled in different ways.

3.3.2 The period from 2017 to 2028

Phoenix has reviewed its tax liabilities for the period 2017 to 2028. This review used:

- **2017 to 2024:** Phoenix's **corporation tax calculation data for the period 2017 to 2024 to determine its tax liability**. From these, tax liability relating to the 'profit before group relief figure' is used as the most appropriate indicator of Phoenix's standalone tax position. This reflects the taxable profit attributable to the regulated business itself, before any intra group offsets are applied, and therefore serves as a consistent basis for comparison against the implied tax allowances.
- **2025 to 2028:** the formula in UR's GD23 Pi model, where tax liabilities are estimated based on estimated taxable profits[14], to **estimate Phoenix's expected tax liabilities for the period 2025 to 2028**.

For clarity, Phoenix is not endorsing this calculation for forecasting its tax liabilities and has only used it to illustrate what UR's own methodology implies for Phoenix's tax

[14] See, for example, rows 8 to 12 of "UR Tax Calculation" worksheet in UR's GD23 Pi model

position over the period 2025–2028 and therefore support the comparison in section **3.4** which considers its historical tax allowances and tax liabilities over the period 2017–2028.

3.4 Tax charges and tax allowances for 2017 to 2028

Using the methodology to calculate tax allowances set out in section **3.2.2** and the methodology for calculating actual tax liabilities set out in section **3.3.2**, the implicit tax allowances set by UR and Phoenix's actual (and forecast until 2028) tax liabilities are closely aligned:

Table 1: Comparison of calculated implicit tax allowance and estimated tax liability (£m, nominal)

	2017-2024	2017-2028
Implied tax allowance	**36.41**	**59.78**
Calculated tax liability	**35.93**	**57.56**

Phoenix notes that the GD23 forecast of tax paid compared with tax allowances is smaller than in earlier analysis carried out by UR, due to HMRC policy changes e.g. introduction of full expensing of capital allowances.

Over the period 2017 to 2024, UR's implied implicit tax allowance and the calculated corporation tax liability are almost identical, and this pattern broadly continues when extending the comparison through to 2028. This confirms that the two years selected by UR[15] in its Call for Evidence (2017 and 2018) are not reflective of the overall position for Phoenix across the extended period post 2016 i.e. the amount of any potential over-funding of tax is very modest. Of note the incomplete consideration of the data available is compounded by using incorrect tax liability values.

Conclusion

Based on the information currently available to Phoenix, it is not possible to determine either the tax allowed or tax paid for the period prior to 2017, because the data required to calculate such adjustments accurately, consistent historical WACC parameters, capital allowance schedules, interest deductions and taxable profit components, does not exist for that period.

[15] Call for Evidence, Table 3.3, Implicit Corporation Tax v Actual Corporation Tax paid for Phoenix Energy and Kinecx Energy for 2017 and 2018.

For the period from 2017 onwards, where consistent inputs are available, the above analysis indicates no significant under- or over-funding. UR's implied implicit tax allowances and Phoenix's actual (and forecast) tax liabilities are closely aligned.

Further, based on the evidence presently available, it would be extremely unlikely to be in customers' interests on the grounds of materiality, see Chapter **4** for further details.

3.5 Profile Adjustment

Section 3 and particularly pages 18-19 of UR's Call for Evidence discuss the relationship between the Profile Adjustment ("PA") and tax allowances. Option 3 discussed by UR also explicitly refers to the PA. Therefore, this section discusses the relationship between the PA and tax, beginning with a recap of the role of the PA in Phoenix's regulatory framework.

Under a typical building block approach a regulator may adopt to set allowed revenues for regulated networks, the required revenue for a price control period is built up using a calculation of operating expenditure plus depreciation (from capital expenditure added to the Regulatory Asset Base) plus the allowed return. This methodology was applied to regulated utilities in GB following privatisation. The PA that was introduced as part of the 2006 Agreement is unusual in that it profiles Phoenix's allowed revenues over a longer period (i.e. all the way to 2046), and across multiple price control reviews. Section **2.2** provides further detail on the 2006 Agreement of relevance to the Call for Evidence.

The PA has the effect of smoothing tariffs for customers as the customer base grows through increasing connections to the network. It is a means of storing the difference between ***revenue*** recovered in the early years and the actual revenue allowed under the building blocks of regulation; It is explicitly not a depository for differences between actual and forecast ***expenditure*** (including tax liabilities). Each year the difference between actual and allowed revenue is 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") (plus working capital, capital creditors and uncertainty mechanism adjustment amounts).

This means that Phoenix will not recover all of its actual revenue requirement from the early years until later price control periods. At the end of the revenue recovery period (2046), the PA will, all else equal, be fully paid down to zero and the TRV will equal the DAV (plus working capital, capital creditors and uncertainty mechanism adjustment amounts also included in the TRV).

Based on Phoenix's review of UR's historical price control determinations, UR has never made any case that PA directly or indirectly funds taxation nor indeed as explained above is there any rationale for doing so.

Suggesting that this is the case conflates two completely different factors in an attempt to justify a regulatory argument which is based on retrospectivity. Fundamentally, a retrospective adjustment applied to DAV or PA has exactly the same impact from a financeability point of view as in both cases it only goes to undermine data upon which financing ratios have been calculated and that have been relied upon by rating agencies and investors to support the financial structures employed.

There is currently insufficient evidence for the PA to be used to reprofile Phoenix's revenues (retrospectively or otherwise) in order to fund future tax liabilities. We would welcome the opportunity to engage with UR to understand the source and support for such assertions as the review evolves.

3.6 Conclusion

In this chapter Phoenix shows that there is currently insufficient evidence to robustly calculate the size of any of the retrospective adjustments to allowed revenues, TRV and/or PA that some of UR's options would entail.

Phoenix Energy

4. Regulatory Practice and UR's Call for Evidence

Tax is a significant cost for Phoenix, and it is important that tax allowances are set accurately in the future. UR has noted that there is uncertainty over whether Phoenix will be able to fund its future tax liabilities under the approach taken by UR in the derivation of pre-tax WACC currently (i.e. proceeding with Option 1 of the Call for Evidence). Based on UR's GD23 Pi model, during the GD23 price control period the annual corporation tax liabilities may exceed the implicit corporation tax allowances from the allowed pre-tax WACC This means that Phoenix is in a position where it is generally paying increasing amounts of corporation tax without a corresponding increase in its corporation tax allowances.

A reliable and fair way of setting tax allowances is therefore required for the future.

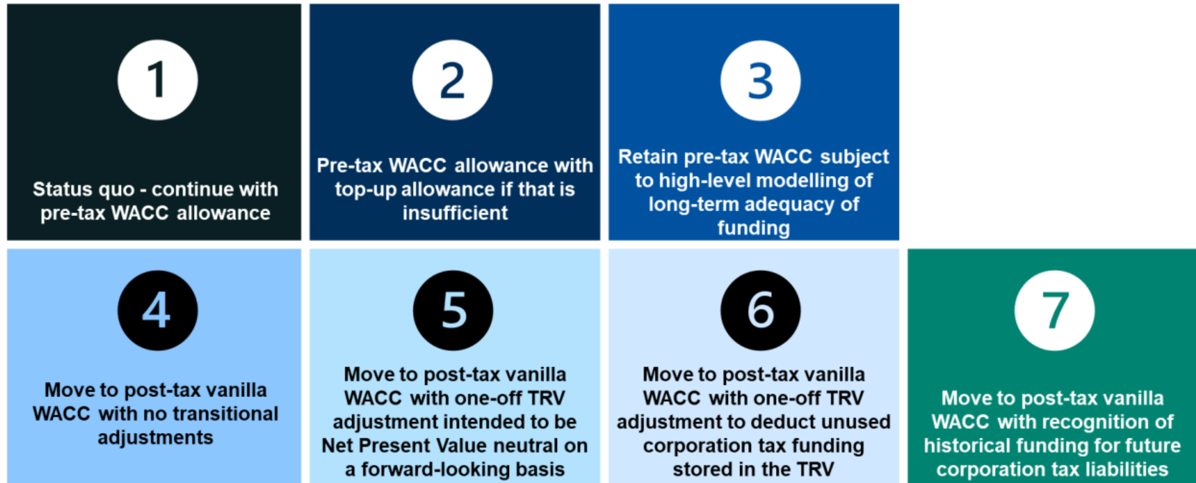
Other UK regulators have addressed similar concerns by adopting a post-tax vanilla WACC that seeks to match corporation tax allowances with liabilities each year. UR is considering a similar transition to a post-tax WACC. UR is concerned that without such a corporation tax transition, Phoenix could suffer from financeability concerns. However, the Call for Evidence notes that a transition to a post-tax WACC may result in customers paying twice i.e. once for historical corporation tax allowances assumed under the pre-tax regime and again on an annual basis under the post-tax WACC.[16]

In response to this concern, UR's Call for Evidence sets out seven options for providing tax allowances in future[17] (see Figure 1 below). Some of UR's proposed transitional measures would seek to clawback any excess historical tax allowances that may have been received, although this is yet to be established. This would be inconsistent with every relevant historical precedent to-date with the exception of one (out of 52 transitions identified so far). Furthermore, transitional measures of this type would retrospectively re-open past price control decisions – which is inconsistent with typical regulatory practice.

[16] Call for Evidence, Paragraph 4.9.

[17] Call for Evidence, Table 5.1, Summary of GD29 tax options for consideration.

Figure 1: Summary of options proposed by UR in its Call for Evidence



For the avoidance of doubt, Phoenix understands that Option 4 is a move to post-tax vanilla WACC without any retrospective adjustments to revenues, PA, TRV or determined ex-ante tax allowances.

4.1 Past examples of switching from pre-tax to post-tax WACC

When other economic regulators have switched from a pre-tax WACC to a post-tax WACC regime, their approach has been generally forward-looking regardless of whether taxes have been over-funded historically or not. To illustrate this point, Table 2 below summarises specific examples of regulators transitioning from a pre-tax to a vanilla WACC and whether any retrospective adjustments were applied. In total adjustments have been considered for 52 regulated companies of which 51 were transitioned with no retrospective adjustments. Further detail on each of these examples is provided in the **Appendix**.

This information has also been previously provided to UR by Phoenix in a report produced by KPMG.

Table 2: Summarised examples of transitioning from a pre-tax to vanilla post-tax WACC

Price Control	Regulator	Sector	Case for change	Whether any adjustments to RAB (or allowed revenues) had been made
EDPCR4[18][19]	Ofgem	Electricity Distribution Networks **(14 DNO Licensees)**	Move from pre-tax to post-tax as tax wedge no longer aligned with actual taxes.	No retrospective adjustment.
GDPCR[20]	Ofgem	Gas Distribution Networks **(8 GDNs)**	Align tax allowances with expected payments; consistency across controls.	No retrospective adjustment.
PR99[21]	Ofwat	Water companies **(10 Water and Sewerage Companies and 16 Water only companies)**	Pre-tax wedge diverged from actual tax; shift to post-tax with company-specific allowances.	No retrospective adjustment.
PR08 / CP4[22][23][24]	ORR	Rail **(Network Rail only)**	Pre-tax WACC would over-fund due to minimal tax; move to company-specific allowance.	Yes - retrospective clawback of prior over-funding.
RP4[25]	Utility Regulator	Electricity **(NIE Networks only)**	Adopt post-tax to limit gearing incentives and reflect actual tax.	No retrospective adjustment.
PC21[26]	Utility Regulator	Water **(NI Water only)**	Align with Ofwat/Ofgem; use forecast company-specific tax costs.	No retrospective adjustment.
NR23[27]	Civil Aviation Authority	Aviation **(NATS only)**	Improve transparency; post-tax better reflects actual costs.	No retrospective adjustment.

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[18] https://www.ofgem.gov.uk/sites/default/files/docs/1999/05/review-of-oes-1998-to-2000-dpcr.pdf
[19] https://www.ofgem.gov.uk/sites/default/files/docs/2004/11/8944-26504_1.pdf
[20] https://www.ofgem.gov.uk/sites/default/files/docs/2006/07/14670-gdpcr-2cd-final19july.pdf
[21] https://www.ofwat.gov.uk/wp-content/uploads/2020/10/PR99-final-determinations-document.pdf
[22] https://www.orr.gov.uk/sites/default/files/om/pr08-financial-issues-let-060907.pdf
[23] https://www.orr.gov.uk/sites/default/files/om/pr08-corporation-tax-060808.pdf
[24] https://www.orr.gov.uk/sites/default/files/om/383.pdf
[25] https://www.uregni.gov.uk/files/uregni/consultations/price-control-rp4-public-paper-nie4.pdf
[26] https://www.uregni.gov.uk/files/uregni/media-files/UR%20PC21%20Main%20report%2001.00%20Published.pdf
[27] https://www.caa.co.uk/publication/download/20909

Phoenix notes that UR's Call for Evidence refers to other regulators' approach, but limits itself to the ORR example, the only example where a retrospective adjustment was introduced.

Phoenix submits that the ORR example for switching Network Rail from pre-tax WACC to post-tax WACC is not directly comparable to Phoenix and Kinecx Energy. The ORR applied a retrospective tax clawback for CP3 because Network Rail had been allowed around £1.5bn of implied tax allowance but paid only c.£46m. To avoid a clear case of double funding, the ORR created an "overfunding account" and gave no tax allowance at all during CP4 until the balance was extinguished. No true-up mechanism was applied to CP4 tax allowances.

This case entailed a very particular set of circumstances, which is not comparable to Phoenix because Network Rail had been re-nationalised following the bankruptcy of Railtrack. This meant that it was a publicly owned company with no private sector shareholders and a government guarantee of its debt, and so the impact on WACC and financeability of retrospective changes were entirely different, plus the retrospective changes were likely done with the consent of the company given its shareholders. It is also important to note that even in those circumstances the retrospective adjustment applied to one historical price control period, not the entirety of the period of historical regulation under a pre-tax WACC regime.

Specifically in relation to gas networks Ofgem, when transitioning GB GDNs, explicitly stated in their consultation, **it was not appropriate to claw back historic tax benefits because the pre-tax WACC was part of an integrated policy package and in line with Ofgem's policy at the time**.[28] This was consistent with the approach Ofgem adopted elsewhere.

4.2 Regulatory practice

Phoenix notes that regulatory bodies, such as the Financial Conduct Authority ("FCA"), Ofgem, UR and others generally aim for their rules to be applied on a forward-looking basis, providing firms with predictability and time to implement changes.[29] Retrospective adjustments - including specifically when transitioning from a pre-tax to a post-tax approach - risk introducing regulatory uncertainty, undermine investor confidence and will weaken the perceived stability of the regulatory regime in NI. For

[28] https://www.ofgem.gov.uk/sites/default/files/docs/2006/12/16340-one-year-control-final-proposals-document-final_0.pdf, paragraph 4.10.

[29] For example, see https://www.fca.org.uk/publications/corporate-documents/regulatory-initiatives-grid#:~:text=The%20Grid%20includes%20initiatives%20designed,Reform%20and%20Wholesale%20Markets%20Review and https://www.ofgem.gov.uk/sites/default/files/2025-11/Market_Strategy_and_Vision_to_2030.pdf

this reason, regulators typically avoid introducing changes to regulation in a way that would have material retrospective effect, unless they have a clear evidentiary basis to do so.

For example, Ofgem had previously floated the possibility of adjusting companies' RAV at the end of the RIIO-2 period to claw back excess profits[30] but ultimately dismissed this option on the grounds that this would be viewed as a surprise by investors and credit rating agencies. Citizens Advice (NI's CCNI equivalent) agreed with this decision, saying there should be a "high bar" for taking any action that could be viewed as retrospective noting "*this has potential to cause a downgrade in the credit rating of the Ofgem regulatory regime. Any downgrade would generate increased debt costs over the longer term that would outweigh the consumer benefit of recovering the windfall*."[31]

Similarly, when the UK Competition Commission ("CC") (the predecessor to the CMA) considered Phoenix's (then Phoenix Natural Gas Limited) price determination in 2012[32] it noted that once a regulator has concluded a price control, there are strong arguments that it cannot revisit its decisions at will.[33]

The CMA has reaffirmed that regulators need to meet a high evidential threshold when making material changes, for example: (i) where Ofwat introduced the Gearing Outperformance Sharing Mechanism (GOSM) in PR19[34]; and (ii) the RIIO-2 Final Determinations for electricity transmission and gas networks where Ofgem introduced an "Outperformance Wedge". [35]

In both these cases, the CMA noted that the evidence to support the need and benefit of these changes had not been present or provided and, in the circumstances, it was not appropriate to introduce them cautioning, in particular in relation to the "Outperformance Wedge", that it was an ineffective way to address alleged outperformance and it risked increasing costs for customers in the long-term through regulatory uncertainty.

Additionally, given UR's various duties under Article 14 of the Energy Order, material changes to the regulatory regime which could have an impact on predictability and

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[30] https://www.ofgem.gov.uk/sites/default/files/2024-11/Tax%20clawback%20review%20call%20for%20input.pdf#:~:text=The%20tax%20allowance%20features%20a%20tax%20clawback,is%20adjusted%20for%20in%20the%20tax%20allowance.

[31] https://assets.ctfassets.net/mfz4nbgura3g/50vEwp7WgCIY0oB4hCYKuG/31a3facc46b352ee3b74cc9680c07ed1/Debt_to_society__2_.pdf pages 74-75

[32] CC, *Phoenix Natural Gas Ltd. price determination,* 28 November 2012, Paragraph 9.52 and section 8.

[33] CC, *Phoenix Natural Gas Ltd. price determination,* 28 November 2012, Paragraph 9.48 onwards.

[34] https://assets.publishing.service.gov.uk/media/60702370e90e076f5589bb8f/Final_Report_---_web_version_-_CMA.pdf

[35] https://assets.publishing.service.gov.uk/media/617fd07ce90e07197483b8a9/ELMA_Final_Determination_Vol.2B.pdf

confidence in the regime, as well as financeability of regulated entities, need to be substantiated and supported by robust evidence rather than alleged and unproven benefits or impacts.

5. Financeability and Investment

As discussed in Chapter **4**, economic regulation aims to secure an efficient cost of capital and regulated entities' financeability to encourage investment in the gas network.

With UR's questions in its Call for Evidence in mind, in this chapter Phoenix considers in broad terms the likely impact of UR's proposed options on financeability and ongoing investment into the network.

Phoenix also notes that Section 14 of the Energy (Northern Ireland) Order 2003 requires UR to carry out its functions in a manner consistent with its principal objective which includes, among other things, ensuring that licence holders can finance their licence obligations. Therefore, when assessing the relative merits of the different options UR will need to be mindful of the potential impact that they will have on Phoenix's financeability and ability to invest going forward.

5.1 Impact on Financeability

We consider that there are two fundamental considerations in ensuring that the Phoenix business is financeable. These are set out below:

5.1.1 Setting an appropriate WACC

As part of each price control process, UR undertakes a detailed calculation to set appropriate returns to facilitate the business obtaining debt and equity investment to support its operations. Undertaking such work in the full knowledge that the outcome of the calculation will understate the actual tax liability risks undermining the credibility of the calculation itself and risks making the business unfinanceable. Setting tax allowances that investors expect will meet future tax expenses is vital to securing an efficient cost of capital. If investors perceive that future tax allowances are insufficient, then this increases risk in the business. Consequently, both equity and debt will require an uplift in cost of capital to align to this heightened risk thereby offsetting the impact of any under-funding of tax allowances. Any cost of capital increases, ultimately costing bill payers more.

All else being equal, assuming a notionally efficient company performs in line with the price control assumptions, actual expenditures (including financing costs) will equal the allowances. Setting tax allowances equal to expected taxes is therefore important to ensure the financeability of regulated companies as target financial ratios consistent with the assumed credit rating of the notionally efficient company will then be achieved.

If tax allowances are set below expected tax charges, then, all else being equal, the regulated company would not be able to achieve the target credit ratios. A decrease in the credit ratios, including the Post-Maintenance Interest Cover Ratio ("PMICR"), can therefore lead to a downgrade in a company's credit rating and an increase in debt cost, making it more difficult for it to service its debt. Therefore, in appraising each option, UR needs to consider the impact it will have on the financeability of Phoenix.

5.1.2 Regulatory Stability

As part of their assessment of required return investors will consider the predictability of the regulatory regime. Less predictable regulatory regimes typically require increased rates of return.

Moody's has previously stated that Phoenix's credit quality[36] is constrained by its view that "*the regulatory regime governing [Phoenix's] operations is less stable and predictable than for other energy networks in Great Britain*", with any "*adverse changes to the regulatory framework*" one factor that could lead to a downgrade in the future (Moody's previously cited that "*significant changes to the framework were introduced without consultation late in the GD23 process, including a novel inflation adjustment*"[37]).[38]

It is also relevant that Moody's downgraded UR's regulatory regime shortly after the GD23 process concluded. Phoenix subsequently fully refinanced its debt and whilst it is difficult to isolate precisely how much the downgrade contributed to the cost of debt actually achieved; it is likely to have exerted some upward pressure on financing costs.

While the primary impact of a credit rating downgrade is reflected in a higher cost of debt, it also has an impact on the cost of equity. This reflects the principle that equity investors will require higher returns if the risk profile of the firm increases.

5.2 Assessment of UR's alternative approaches to resolving financeability Issues

In the Call for Evidence UR seeks views on appropriate changes to the assessment of financeability.

5.2.1 Resolving financeability issues through bespoke methodologies

It would not be appropriate for UR to disregard the financeability problems identified above, or to argue that these financeability issues can be resolved by employing a

[36] As of April 2022, Moody's rating methodology seeks to incorporate all material credit considerations and to take the most forward-looking perspective that visibility into these risks and mitigants permits. Stability and predictability of the regulatory regime make up 15% of its scorecard for the analysis of regulated electric and gas networks.
[37] Rating_Action-Moodys-changes-outlook-on-24May2023-PR_476214
[38] Credit_Opinion-Phoenix-Energy-Group-Ltd-30Jul2025-PBC_1448697

bespoke approach to financeability in GD29 that deviates from typical regulatory practice and the approach adopted by credit ratings agencies e.g. by making bespoke changes to credit rating definitions.

It is important to note that Moody's, and other Credit Rating Agencies ("CRAs") (such as Fitch), do not change their methodology or definition of financial ratios very often, if at all. In addition, Moody's explicitly places weight on the stability and predictability of the regulatory regime within its scorecard, recognising that a consistent regulatory framework is a key factor supporting credit quality for regulated networks. Other regulators use the same definitions, and/or there has been substantial engagement with CRAs and investors about any potential deviations of definition.

There are examples of economic regulators trying to diverge from CRA methodologies, leading to potential worsening outcomes for customers. For example: (i) Ofwat was criticised by the CMA for its approach to financeability in PR19 by bringing forward cash-flows through an increase in the PAYG rates where the CRAs would not recognise such advancement of cash flows as having an impact on the credit quality of a regulated business;[39] and (ii) Ofgem tried to change the definition of PMICR to PMICRg (where g is the gearing ratio of debt to RAV) at the RIIO-ED1 Draft Determinations, and received significant pushback from industry participants.[40]

Therefore, Phoenix would not support the definition of the credit ratios UR uses in its financeability assessment for Phoenix and the other GDNs and instead confirms that the ratios are well defined, and the thresholds for passing the tests are aligned with the most recent credit rating guidance.

5.2.2 Assuming financeability issues can be resolved by Phoenix

It would not be correct for UR to assume that any such financeability problem could be addressed by Phoenix injecting equity and/or lower dividend assumptions and, any attempt to address financeability using either of these methods does not remove the duty of UR to reflect the gearing structure of Phoenix in any WACC determination.

This is because UR has determined a financial package that delivers best value for money for customers and UR would be undermining the recoverability of the TRV through any retrospective action:

- reducing the gearing assumption would lead to a higher overall WACC as a sub-optimal capital structure is adopted (with more equity and less debt than optimal);

[39] https://assets.publishing.service.gov.uk/media/60702370e90e076f5589bb8f/Final_Report_---_web_version_-_CMA.pdf Chapter 10

[40] https://www.ofgem.gov.uk/sites/default/files/docs/2014/07/riio-ed1_draft_determination_financial_issues.pdf page 20

- reducing dividends would increase the cost of equity because:
  - (i) equity investors have assumed a certain amount of dividend yield when setting their rate of return expectations, so lower dividends would lead to a higher required rate of return;
  - (ii) delaying dividends extends the duration of cashflows to equity investors, which increases the required rate of return due to the term premium effect from changes in the interest rate 41; and
  - (iii) the reduced equity buffer would lead to credit rating downgrades, increasing the cost of debt as well; and
- expecting a regulated company to accept lower rates of return to equity investors in order to preserve financeability would ultimately lead to inefficient levels of investment into the gas network as investors would be unwilling to commit more capital to fund network activity (further detail is provided at section **5.3**).

It would also not be consistent with regulatory good practice to deliberately set allowed revenues below efficient costs, including financing costs and tax costs.

5.2.3 Assuming financeability issues will be resolved over the long term

It is important that financeability is assessed over the short and medium term, not just the long term, and that the financeability assessment is updated from time to time, such as at each regulatory price control review. This is because lenders, and credit ratings agencies, need confidence that Phoenix will be able to meet its obligations – interest and principal repayments – to creditors over the short and medium term, not just the long term. Creditors must be paid according to contractual arrangements, usually quarterly or semi-annually. If these payments are not met, Phoenix would be in default on its obligations.

For these reasons, credit rating agencies assess a company's ability to service its debt over the short to medium term, but not over a 20+ year period (out to say 2046). In addition they do not focus on a single year in isolation but rather on average performance and trends across a multi-year period to determine financeability and the resilience of companies, especially in regulated sectors like water and energy. For instance, Moody's ratings guidance reflects expectations for future financial and operating performance, with financial ratios typically calculated based on the average of the last three years of reported results.[42]

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[41] https://www.northerngasnetworks.co.uk/wp-content/uploads/2019/12/A28-NGN-RIIO-2-Review-of-NGNs-Financial-Analysis-for-RIIO-GD2.pdf page 4

[42] Rating Methodology_ Regulated Electric and Gas Networks (April 2022), page 20

Economic regulators such as Ofgem and Ofwat conduct comprehensive financeability checks on regulated companies over a five-year period, which aligns with their price control review cycles.

5.3 Impact on Investment and development of the gas network

UR must also be mindful of the impact that the various options would have on investment in the gas network in NI. If investors consider that the option chosen impacts financeability or denotes an unpredictable regulatory regime then they may be reluctant to commit new capital to the business, or to retain earnings within the business. Any benefits created by UR in adopting a GB style regulatory regime from a lending perspective (which have driven down the cost of debt) will be eroded by any retrospective action on TRV, as this impact would be passed through and reflected in the cost of debt to customers. This would manifest itself in underinvestment in the gas network in future, leading to slower (or no) expansion of the network and the cost of connection for new customers could become more expensive limiting their opportunity to benefit from having gas installed in their homes and businesses.

Given the important role that the expansion of the use of natural gas has in NI's energy decarbonisation strategy, particularly for home heating, this would undermine NI's progress towards its decarbonisation goals. It would also slow down the development of the biomethane and hydrogen industries in NI, further undermining progress towards decarbonisation. It would not, therefore, be in the interests of customers.

6. Appraisal of the options set out by UR

6.1 Assessment of UR's proposed options

As outlined in Chapter **4**, any changes to the way tax allowances are set could have a material impact on Phoenix's business and its customers and therefore need to be carefully considered, with an appropriate impact assessment and evidence supporting any ultimate decision. That impact assessment needs to feed into any decisions from UR who will also need to balance its statutory duties under the Energy Order.

Phoenix has undertaken some preliminary assessment of the options in UR's Call for Evidence. We have sought to evaluate the options against a number of assessment criteria drawn from UR's objectives and duties and wider regulatory principles (also informed by the approach adopted by other economic regulators in GB). These criteria include the following:

- Protects customers' interests, including that customer bills represent value for money
- Capable of implementation e.g. data required to apply the method exists (see Chapter **3**)
- Consistency with typical regulatory practice (see Chapter **4**)
- Secures an efficient cost of capital, including through any impact on perceptions of risk and required rates of return (see Chapter **5**)
- Preservation of financeability (see Chapter **5**)
- Promotes development of gas network, including meeting of energy transition targets (see Chapter **5**)

Most of the options that UR has proposed are not aligned with the objectives that UR should be having regard to. Many of the options risk increasing the cost of capital, undermining financeability and stability, weakening incentives to invest in the development of the gas network, and are not consistent with typical regulatory practice or implementable. They are not in the customer interest as a result:

- **Option 1** would continue with the current pre-tax approach. There is no consideration of whether the tax allowances granted under this methodology would be sufficient to meet Phoenix's tax liabilities and therefore it is likely that Option 1 would result in Phoenix being underfunded for tax, which could give rise to financeability challenges. As highlighted in Chapter 3 Phoenix has not identified any evidence that it has been overfunded for tax historically therefore

this option could result in underfunding of Phoenix's efficient future costs - in this case its tax liabilities. Option 1 would therefore risk undermining Phoenix's ability to maintain appropriate benchmark ratios and thereby its credit rating.

Further by not considering the actual tax that Phoenix is likely to pay, UR will be out of line with typical regulatory practice where such an assessment is undertaken and allowances are granted in line with the expected tax liabilities. This may lead to a potential downgrade of the regulatory regime in NI and as a consequence a rise in the cost of capital.

- **Options 2 and 7** would require UR to compare historic tax allowances to the amount of tax paid to identify a pool of overfunded tax liabilities that will not be funded in the future.

  Under Option 2, WACC would continue to be allowed on a pre-tax basis with a potential top up added to the extent that the tax allowances granted do not meet Phoenix's corporation tax liabilities and support financeability concerns. However this top up will be capped in some way to claw back any tax that has been overfunded in the past.

  Under Option 7, WACC would be calculated on a post-tax basis with tax allowed on the basis of expected tax receipts capped in some way similar to Option 2 above, with any deficit being taken off the pool of over funded tax liabilities.

  Both these options pre-suppose that tax has been overfunded historically and that this can be clearly valued. As detailed in Chapter 3 Phoenix has not identified any evidence to support the conclusions that Phoenix has been overfunded or that it can be calculated.

- **Option 3** would be similar to Option 1 but assumes that there is evidence that Phoenix has been overfunded for tax historically and seeks to put a limit on Phoenix's exposure should the tax system or rates fundamentally change in the future. This option does not grant tax allowances in line with Phoenix's future efficient costs and thereby will likely give rise to financeability issues. It is also not clear how such a cap would apply.

- **Option 5** proposes to move to a post-tax WACC and at the same time make a one-off adjustment to account for historic over-funded tax liabilities using prospective tax calculations. The approach is based upon calculating the difference between the future pre-tax and post-tax allowances (Net Present Valued) and deducting that difference from the TRV.

This proposal simply concludes that any underfunding of tax between the two regimes in the future must have arisen because of a corresponding overfunding in the past.

In order for this option to be viable, UR would need to clearly evidence that such tax allowances had historically been provided and that Phoenix had been overfunded for tax liabilities, which at this stage has not been established.

- **Option 6** proposes moving to a post-tax WACC with a one off TRV adjustment but this time the calculation of such an adjustment is based on the extent that Phoenix has been overfunded for tax historically. Such an approach has only been applied on one occasion out of 52 transitions within the UK regulatory environment and was under very bespoke conditions that were clearly understood and agreed by all parties.

  For the period from GD17 onwards, and applying UR's own methodology/models, the delta between implicit tax allowance and actual tax paid is estimated to be c.£2m and for the period prior to 2017 Phoenix has not identified any evidence that allows such calculation to be undertaken.

- **Option 4** proposes a move to post-tax WACC without any retrospective adjustments to revenues, PA, TRV or determined ex-ante allowances. This is the only appropriate option given the lack of evidence identified by Phoenix that tax allowances were provided for in the past, and ensures there is no material customer impact while at the same time ensuring GDNs are treated fairly. It will also better align future revenue with future liabilities. We can take further comfort from the fact that it would also be consistent with 51 out of 52 transitions of prior relevant precedents. Key to implementing this would be:
  - a detailed modelling of expected taxes based on expected profits, interest deductions and capital allowances; and
  - assuming prevailing tax rules continue to apply over the period, but with mechanisms to make true-ups/downs if rules change during the period.

  Consideration could also be given to including tax clawback mechanisms in the event of a significant increase in gearing above the notional gearing level specified in the price control determination.

6.2 Timing for implementing any change into Phoenix's licence and regulatory framework

Phoenix recognises that any change to the regulatory framework would only take effect in GD29 but would strongly support UR making the relevant licence modification for the proposed change prior to the GD29 Final Determination licence modification.

The Call for Evidence closes on 27 February 2026, and UR expects to publish a consultation in May 2026 and a policy position outlining its final decision in November 2026[43] with any changes to the treatment of corporation tax applying from GD29. Phoenix is supportive of this timetable.

However, Phoenix understands that the licence modifications to implement UR's final decision may only be made as part of the GD29 licence modification process, rather than at the time of the policy position in November 2026.

Phoenix notes 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. UR could introduce the licence modifications with their effect taking place on a deferred basis – i.e. in this case, the licence modification would be made shortly after November 2026 but only come into force from GD29.

By way of comparison, when Ofwat introduced new financial resilience licence conditions / modifications for the water sector in March 2023 it adopted a comparable approach. Some of the measures had immediate effect, whereas others, like the modification to the cash lock-up licence condition, were introduced on a deferred basis such that they would only have effect at PR24.[44]

Phoenix would support UR adopting a similar approach in this case and consulting on proposed licence modifications at the time that UR publishes its policy position in November 2026, with final wording for the licence being introduced soon after.

In addition to there being no procedural reason why UR could not modify the licence with a deferred effective date, there are significant benefits to making the necessary change immediately. For example, if the licence modification is delayed until GD29 then Phoenix (and Kinecx Energy) will face uncertainty in the intervening period while they wait to see the

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[43] Call for Evidence, Table 7.1, Next Steps in UR's Treatment of Corporation Tax Process.

[44] https://www.ofwat.gov.uk/wp-content/uploads/2022/07/Decision_document_financial_resilience_proposals.pdf, see p.2.

details of UR's proposed changes. This uncertainty will have several knock-on consequences – including potentially impacting Phoenix's financeability assessment and refinancing plans. Furthermore, it would make it challenging for Phoenix (and Kinecx Energy) to prepare their business plans for GD29 as they may need to prepare them on the basis of a methodology that they do not agree with and which they have no ability to challenge until a GD29 Final Determination and licence modification have been issued.

For these reasons, Phoenix sees no reason for delaying the making of the licence modification until the GD29 licence modification and supports making the relevant changes shortly after the policy position has been taken with a deferred effect until the start of GD29.

Phoenix would welcome further direct engagement with UR on potential challenges on the timing of the implementation of its decision.

7. Responses to UR's Questions for Consultation

7.1 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*.

Phoenix response

Tax is a significant cost for Phoenix, and it is important that tax allowances are set adequately in the future and broadly in line with tax to be paid so as not to undermine the principles of economic regulation for UK regulated sectors and which underpin the financing structures and financeability assessments which this sector relies upon.

UR has noted that there is uncertainty over whether Phoenix will be able to fund its future tax liabilities under the approach taken by UR in the derivation of pre-tax WACC currently. Based on UR's GD23 Pi model, during the GD23 price control period the annual corporation tax liabilities may exceed the implicit corporation tax allowances from the allowed pre-tax WACC. This means that Phoenix is in a position where it is generally paying increasing amounts of corporation tax without a corresponding increase in its corporation tax allowances, thereby placing pressures on its financing structures.

On the basis that this disparity is predicted to increase going forward, it is essential that UR come up with an adequate and fair way of setting tax allowances into the future.

UR should therefore consider changes to the price control process for funding of Phoenix's corporation tax liabilities from GD29 and beyond given Phoenix's expected actual taxes are likely to exceed the funding for tax allowances that would be provided through the price control if current methodologies are retained. This is because Phoenix's efficient costs would be underfunded by the price control, impairing financeability assessments, increasing investor perception of the risk of the regulatory framework, reducing gearing levels that could be supported by a notional efficient company and, by extension, increasing the required cost of capital.

It would therefore be in customer's interest in such circumstances for UR to move from a pre-tax to a post-tax WACC, provided it is done in an equitable and predictable way, and using a methodology consistent with what regulators have done previously, and which underpins and informs investment decisions in regulated assets in the UK.

Phoenix Energy

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*.

Phoenix response

See Chapter **3**. In summary, there is currently no justification for the assertion that moving from a pre-tax WACC to a post-tax WACC would pose risks of customers paying twice. In relation to Phoenix:

- Phoenix has not identified any evidence that customers would be paying twice. As set out above, 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. There is no evidence available to support a conclusion of over-funding for the 1996-2016 period.
- It was only from GD17 that Phoenix was subject to a traditional building blocks price control using the CAPM model. The available evidence over the 2017-2028 period suggests Phoenix may end up being over-funded by c.£2m (in nominal terms) in total.
- Accordingly, as things stand today, there is no evidence that a transition to a post-tax WACC from GD29 would lead to customers paying twice.

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*.

Phoenix response

See chapters **2**, **3** and **4**. In summary, Phoenix does not consider that comparing implicit allowances against actual tax liabilities will be an informative (or even possible) exercise for UR. In relation to Phoenix:

- As outlined in Chapter **3**, Phoenix notes that:

Phoenix Energy

- there is insufficient data to calculate Phoenix's **historical implicit tax allowances** from 1996 to 2016 – which represents a material portion of the period that UR is considering. Phoenix has applied UR's methodology and sought to determine implicit tax allowances from 2017 to 2028 as set out in section **3.2.2**.
- any reconciliation of **"allowed" versus "actual" tax** is impossible to determine for the period from 1996 to 2016. Furthermore in terms of actual tax liabilities this again is inherently uncertain for several reasons including: (i) insufficient data to calculate the tax allowances; (ii) for a material part of the relevant period Phoenix was part of a larger group alongside transmission and supply businesses; and (iii) the relevant period is c.30 years, and reliable tax data is not readily available.
- the available evidence over the 2017-2028 period suggests Phoenix may end up being over-funded by c.£2m (in nominal terms) in total as set out in section **3.4**.

Q4. *Do you have any initial views on any of the list of policy options, or any further options that might be considered?*

Phoenix response

See Chapter **6**. In summary, and in relation to Phoenix:

- UR needs to be mindful of its statutory duties when making changes to the way tax allowances are set.
- Phoenix has qualitatively assessed each of UR's proposed options against several criteria that it considers would need to be met. Of note:
  - many of the options risk increasing the cost of capital, undermining financeability and stability, weaken incentives to invest in the development of the gas network and are not consistent with typical regulatory practice or implementable. In these circumstances, those options are unlikely to be in the customers' interest.
  - of the options proposed, Option 4, which Phoenix understands would entail a move to post-tax WACC without any retrospective adjustments to revenues, PA, TRV or determined ex-ante allowances, could, if implemented adequately, be the best option for setting tax allowances in future. This is the only appropriate option given the lack of evidence identified by Phoenix that tax allowances were provided for in the past, and ensures there is no material customer impact while at the same time ensuring GDNs are treated fairly. It will also better align future

revenue with future liabilities. All parties can take further comfort from the fact that it would also be consistent with 51 out of 52 transitions of prior relevant precedents.

Q5. *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 consideration of the future funding of Phoenix Energy's and Kinecx Energy's corporation tax liabilities?*

Phoenix response

Phoenix has provided a comprehensive response to the Call for Evidence that contains, in chapters 2 to 6, the facts and considerations that are important at this stage regarding the future funding of Phoenix's corporation tax liabilities.

Notably, in response to this question, section **5.3** considers the impact on the development of and the ongoing use of the gas network. In summary, and in relation to Phoenix:

- Many of UR's proposed options for determining future tax allowances would not be attractive, because of the negative potential consequences on cost of capital and on financeability. Changes of this type would potentially undermine the investability in Phoenix going forward.
- Investors, both debt and equity, would be reluctant to commit new capital to the business, or to retain earnings within the business. This has the potential to result in underinvestment in the gas network in the future. This could undermine NI's progress towards its decarbonisation goals and also slow down the development of the biomethane and hydrogen industries in NI, further undermining progress towards decarbonisation.

7.2 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.*

Phoenix response

See section **3.2**. In summary, and in relation to Phoenix:

- Phoenix has not identified statements, models or other evidence to indicate that UR ever provided an implicit (or explicit) tax allowance over the period 1996 to 2016 (see response to question 8).
- In response to question 7, Phoenix details the calculation it has used, to inform this Call for Evidence response, of an implicit allowance for corporation tax for the period 2017 to 2028.

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.*

Phoenix response

See section **3.2**. In summary, and in relation to Phoenix:

- Phoenix has reviewed its tax allowances for the period 2017 to 2028. This review used the formula at table 3.2 of the Call for Evidence to calculate the implicit allowance for corporation tax for the period 2017 to 2028.
- This calculation results in the following implicit allowances:

	2017-2024	2017-2028
Implied tax allowance	**36.41**	**59.78**

- For clarity, Phoenix is not endorsing this formula and has only used it to support the comparison in section **3.4** which considers its historical tax allowances and tax liabilities over the period 2017–2028.

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?*

Phoenix response

See section **3.2**. In summary, and in relation to Phoenix:

- Neither the Department nor UR specified an implicit tax allowance over the period from 1996 to 2016. Furthermore, Phoenix has not identified any price control models containing the necessary data to calculate this and no evidence to suggest that Phoenix's original 8.5% pre-tax rate of return, or 7.5% pre-tax rate of return from

2007, were calculated using a CAPM framework or the value of any of the parameters used in any such CAPM calculation, such as the assumed tax rate. It is impossible to hypothesise what taxes if any were assumed by the NI government, British Gas International or any other stakeholders when the original agreement was negotiated in 1996, nor to determine what tax assumptions, if any, were embedded in the 2006 Agreement.

- This means that no robust or replicable estimate of implicit tax allowances can be produced, had any even been set, for any year prior to GD17. A historical assessment of the implicit allowances for corporation tax from 1996 to 2016 is therefore not possible based on the information available to Phoenix. This is due to the lack of evidence that the parties involved intended to allocate an implicit tax allowance when agreeing the level of return that was appropriate to support the significant greenfield investment that building a new network and sector required.

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.*

Phoenix response

See Chapter **3**. In summary, and in relation to Phoenix:

- Phoenix notes that UR has asked this question in the context of a pre-tax WACC i.e. the regulatory framework which exists today and which is applied in line with regulatory practice associated with this approach. Therefore Phoenix does not agree with UR's assessment set out in the question above. 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. It would not be in customers' interests because it would increase cost of capital (section **5.1**) and impair Phoenix's financeability (section **5.2**).

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.

Phoenix response

See section **3.5**. In summary, and in relation to Phoenix:

- UR introduced a Profile Adjustment (PA) in 2007 to defer the revenue recovery period over a longer-term (initially 40 years), when the customer base was larger and therefore more able to support recovery of the sunk costs associated with the development of the network.
- The PA has the effect of smoothing tariffs for customers as the customer base grows through increasing connections to the network. The PA does not directly depend on tax allowances.
- Based on a review of UR's historical price control determinations, Phoenix has not identified any evidence that (i) UR has ever made the case that PA directly funds taxation; and (ii) that the PA indirectly carried forward any pre-funding of taxes that UR ever claimed to have provided.
- It would therefore be inappropriate for UR to recharacterise the PA to reprofile Phoenix's revenues (retrospectively or otherwise) in order to fund future tax liabilities.

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?*

Phoenix response

Phoenix has provided a comprehensive response to the Call for Evidence that contains, in chapters 2 to 6, all the facts and considerations that are important at this stage in the future funding of Phoenix's corporation tax liabilities.

Notably, in response to this question, section **5.3** considers the impact on the development on the gas network. In summary, and in relation to Phoenix:

- Because of the negative potential consequences on cost of capital and on financeability, investing into Phoenix under many of UR's proposed options for determining future tax allowances would not be attractive.

- For this reason, investors, both debt and equity, would be reluctant to commit new capital to the business, or to retain earnings within the business. This would manifest itself in underinvestment in the gas network in future, leading to slower (or no) expansion of the network, and meaning that the cost to connect to the network for new customers could become more expensive limiting their opportunities to benefit from having gas installed in their homes and businesses. This would undermine NI's progress towards its decarbonisation goals. It would also slow down the development of the biomethane and hydrogen industries in NI, further undermining progress towards decarbonisation.

7.3 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?*

Phoenix response

See section **5.2.3**. In summary, and in relation to Phoenix:

- It would not be 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 (2046). This is because any attempt to do so would not be robust, due its reliance on a range of long-term forecasts of uncertain parameters like capex, opex and the cost of capital.
- It would also not be worthwhile because it would not provide valuable information to UR as it would not be typical regulatory practice to make decisions about price control allowances at GD29 (or any individual price control review subsequently) on the basis of these long term projections, or to assume that financeability issues during GD29 (or other periods) would be acceptable because the long-term forecasts implied that the issues would be reversed on average over time.
- It would be consistent with typical regulatory practice for UR to re-visit the financeability projections for Phoenix at least every price control review, if not more frequently, and sets allowed revenues to ensure that financeability is preserved.

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?*

Phoenix Energy

Phoenix response

See section **5.2**. In summary, and in relation to Phoenix:

- UR should conduct financeability assessments in line with the methodologies used by credit ratings agencies, such as Moody's, and in line with typical regulatory practice.
- This means that UR should not make changes to its GD23 approach at GD29 other than to better align it with the credit ratings agency methodologies and typical regulatory practice.
- It would not be typical regulatory practice for UR to try to adopt bespoke approaches to financeability which are not endorsed or recognised by the market, the rating agencies and/or other regulators.
- We also consider that it would not be appropriate for UR to assume that any financeability problems created by its approach to determining allowed revenues, including any under-funding of future tax liabilities, could (or should) be addressed by Phoenix through equity injections or dividend cuts. This would undermine investability in Phoenix going forward, increase the required returns and negatively impact confidence in the regulatory regime as it would be seen as a re-opening of past price control decisions.

8. Appendix

Table 4: Examples of transitioning from a pre-tax to vanilla post-tax WACC

Price Control	Regulator	Company	Case for change	Whether any adjustments to RAB (or allowed revenues) had been made
EDPCR4[45][46]	Ofgem	Electricity Distribution Networks	Ofgem consulted on whether the tax wedge in the pre-tax WACC still appropriately reflected the tax cash flows of electricity distribution businesses. The regulator noted the need to "check whether the tax wedge is generating an appropriate amount of cash" given changes in HMRC's treatment of network capex. The Final Determinations confirmed a move to a post-tax approach with the tax allowance calculated separately, citing three drivers: (i) the expected increase in effective tax rates due to HMRC reforms; (ii) improved consistency with wider regulatory practice; and (iii)	Ofgem **did not apply any retrospective clawback for past tax wedge outperformance**. Instead, it acted transparently through the DPCR4 consultation, stating that the pre-tax regime formed part of the prior framework. A forward looking gearing related tax clawback was introduced, but no true-up for actual tax costs.

[45] https://www.ofgem.gov.uk/sites/default/files/docs/1999/05/review-of-oes-1998-to-2000-dpcr.pdf
[46] https://www.ofgem.gov.uk/sites/default/files/docs/2004/11/8944-26504_1.pdf

			reducing incentives to increase gearing.	
GDPCR[47]	Ofgem	Gas Distribution Networks	Ofgem continued the policy established at DPCR4, applying a vanilla WACC with company-specific ex-ante tax allowances. The transition for gas distribution was driven by consistency across Ofgem's price controls and recognition of timing differences that meant GDNs had paid less tax than implied under the former tax wedge. Ofgem emphasised that its approach ensured allowances reflected forecast efficient tax payments, based on licence submissions.	In the consultation, **Ofgem explicitly stated it was not appropriate to claw back historic tax benefits** because the pre-tax WACC was part of an integrated policy package. This matched the precedent in electricity. A forward-looking clawback for gearing/interest outperformance was maintained, but no retrospective adjustments were made, and no true-up mechanism was adopted.
PR99[48]	Ofwat	Water companies	Ofwat shifted from a pre-tax WACC (with a generic tax wedge) to a post-tax WACC plus company-specific tax allowances. The change reflected growing evidence that historic pre-tax wedges no longer aligned with actual tax liabilities following legislative changes. Ofwat's Final	No consultation papers preceding PR99 are publicly available, so it is unclear how explicitly Ofwat consulted on the transition. However, **no retrospective clawback of previously allowed tax wedge revenue was applied**, and no true-up mechanism was introduced. PR99

[47] https://www.ofgem.gov.uk/sites/default/files/docs/2006/07/14670-gdpcr-2cd-final19july.pdf
[48] https://www.ofwat.gov.uk/wp-content/uploads/2020/10/PR99-final-determinations-document.pdf

			Determination stated that modelling returns on a post-tax basis, and adding projected tax costs to required revenues, allowed companies to recover the tax they were actually expected to incur based on opening tax positions and projected capital investment programmes.	simply applied the new approach on a forward-looking basis.
PR08 / CP4[49][50][51]	ORR	Network Rail	The ORR moved from a pre-tax WACC to a vanilla WACC with specific tax allowances because Network Rail's expected tax liabilities for CP4 were forecast to be very small. Continuing a pre-tax WACC would have materially over-remunerated the company and weakened financial discipline. A company specific allowance better aligned revenue with actual tax costs.	**The ORR applied a retrospective tax clawback for CP3** because Network Rail had been allowed around £1.5bn of implied tax allowance but paid only c.£46m in tax. To avoid a clear case of double funding, the ORR created an "overfunding account" and gave no tax allowance at all during CP4 until the balance was extinguished. No true-up mechanism was applied to CP4 tax allowances.
RP4[52]	Utility Regulator	NIE Networks	UR transitioned to a vanilla WACC with company-specific tax	Moved to a post-tax basis to "provide tax allowances based on

[49] https://www.orr.gov.uk/sites/default/files/om/pr08-financial-issues-let-060907.pdf
[50] https://www.orr.gov.uk/sites/default/files/om/pr08-corporation-tax-060808.pdf
[51] https://www.orr.gov.uk/sites/default/files/om/383.pdf
[52] https://www.uregni.gov.uk/files/uregni/consultations/price-control-rp4-public-paper-nie4.pdf

			allowance in RP4 for NIE Networks. The rationale behind the transition was to limit incentives to increase gearing while allowing for effective tax expenses incurred.	actual tax expenses rather than on assumed tax-wedge". No consideration was given to past performance with **no retrospective clawback of revenues/RAB.** Despite declaring its intention to include a forward-looking clawback mechanism for higher than notional gearing, UR ended up not including it in the RP4 licence modification or in the subsequent price review.
PC21[53]	Utility Regulator	NI Water	UR decided to adopt a post-tax WACC approach for the PC21 period (2021-2027). This change was part of a broader alignment with the regulatory methodologies used by most other UK regulators, including Ofwat and Ofgem.	The post-tax approach enables UR to factor the company's specific forecast tax costs into its revenue allowance and aligns the UR's approach with other major UK regulators (such as Ofwat and Ofgem), which promotes consistency across the regulated utility sectors. **No retrospective clawback of revenues was proposed.**

[53] https://www.uregni.gov.uk/files/uregni/media-files/UR%20PC21%20Main%20report%2001.00%20Published.pdf

NR23[54]	Civil Aviation Authority	NATS	The CAA's model for the prior RP3 period used a pre-tax WACC with a "tax uplift" to cover tax liabilities, a method NATS found less transparent and inefficient. NATS favoured a post-tax WACC for simplicity and to better reflect actual costs.	The CAA initially proposed a pre-tax WACC approach rolling forward RP3, but eventually moved towards a WACC framework that considers post-tax returns for asset recovery, ensuring NERL could fund investments. **No adjustment (retrospective or otherwise) was made to NATS allowed revenues and/or RAB.**

[54] https://www.caa.co.uk/publication/download/20909