May 21, 2020

VIA ELECTRONIC SUBMISSION

Christopher Kirkpatrick
Secretary of the Commission
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: RIN 3038-AE31; Amendments to the Swap Data Recordkeeping and Reporting Requirements

Dear Mr. Kirkpatrick,

bp has over a 150 year history in America and is committed for the long-term. In the United States, bp has a larger economic footprint than it does in any other country. bp invested more than $125 billion in the U.S. between 2005 and 2019 and our operations contributed $90 billion to the national economy in 2019 alone. We employ more than 13,000 people across the country and support more than 200,000 additional American jobs through our operations and activities.

bp's purpose is to reimagine energy for people and our planet, and we have an ambition of becoming a net-zero company by 2050 or sooner and of helping the world get to net zero. This ambition is underpinned by ten aims, one of which is particularly relevant: to be recognized as an industry leader for the transparency in our reporting. At bp, we believe that transparency is the foundation of credibility and we support the development of good transparency practices and standards for energy market participants.

bp's Interest in this Matter

Please accept these comments from BP Energy Company ("BPEC") in furtherance of the U.S. Commodity Futures Trading Commission's ("CFTC" or "Commission") February 20, 2020 Proposed Rule; Amendments to the Swap Data Recordkeeping and Reporting Requirements ("Part 45 Proposed Rule").[1] BPEC, based in Houston, Texas, is a marketer of natural gas, electric power and natural gas liquids with operations throughout the continental United States, and is a swap dealer ("SD") provisionally registered with the CFTC. Therefore, BPEC would be subject to the Part 45 Proposed Rule.

[1] *See Amendments to the Swap Data Recordkeeping and Reporting Requirements*, 85 Fed. Reg. 21,578 (Feb. 20, 2020).

As an SD, BPEC has been providing swap data pursuant to its obligations under Parts 43, 45, 46 and 49 of the Commission's regulations for many years. BPEC looks forward to working with the Commission and staff to develop an efficient reporting regime that promotes good practices in market transparency and reduces market risk. Reporting should be streamlined and simplified to remove duplicative data fields that are unlikely to be used or aggregated for CFTC analysis. Reporting deadlines should be reasonable enough to ensure that reporting parties can provide accurate and complete, high-quality data.

BPEC's Comments on the Part 45 Proposed Rule:

I. Swap Data Verification/Validation

The Commission proposes in Sec. 45.14(a) to require reporting counterparties to reconcile their own records with SDR open swaps reports and to submit to the SDR either a verification of data quality or notice of discrepancy within 48 hours (for SD reporting parties). Under Sec. 45.14(b), reporting counterparties would be required to correct swap data errors/omissions no later than three business days after the discovery of the error/omission or immediately notify the DMO Director and provide an initial assessment of the scope of the errors/omissions and an initial remediation plan for correcting the errors/omissions.

BPEC supports the goal of ensuring the accuracy of reporting data. Although BPEC understands the Commission's objectives, the proposed verification process timelines create significant challenges for accurate data verification and correction. Also, certain SDRs have proposed in comments that the obligation to verify counterparty data should fall on the reporting party, which would introduce an added challenge. The complexity of coordinating data verification with each non-reporting counterparty and meeting the proposed deadlines for error correction would not facilitate high-quality, accurate data reporting. As an SD, BPEC already verifies its own reported data and submits necessary corrections to the SDR. Given that the vast majority of SDR-reported transactions have a swap dealer as a counterparty,[2] the market is already covered by existing regulatory requirements to correct errors and omissions. As such, the existing requirements should meet the Commission's goal to ensure an accurate data set.

II. New Requirements for Reporting Margin and Collateral Data

The Commission proposes requiring reporting counterparties that are SDs, MSPs, and DCOs to report fourteen new data elements relating to collateral[3] and initial and

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[2] A recent Commission review of the market found that approximately 98% of swaps reported to an SDR have a swap dealer as a counterparty. *See De Minimis Exception to the Swap Dealer Definition*, 83 Fed. Reg. 56,666, 56,674 (Nov. 13, 2018).

[3] The Commission proposes to add a definition of "collateral data" to § 45.1(a). As proposed, "collateral data" would mean the data elements necessary to report information about the money, securities, or other property

variation margin. Despite making this proposal, the Commission asks whether there are better methods to determine the quality of collateral posted that will not result in duplicative effort by reporting parties. BPEC agrees that data available elsewhere should not be duplicated in swap data reporting and encourages the Commission to align reporting requirements with the Capital Requirements Proposed Rule[4] and the National Futures Association (NFA) Monthly Risk Data Report.

In the Capital Requirements Proposed Rule, the Commission proposed in Regulation 23.105(q)(2) a weekly position and margin reporting obligation, which would require that SDs and MSPs report margin information showing (i) the total initial margin posted by the SD or MSP with each counterparty; (ii) the total initial margin collected by the SD or MSP from each counterparty; and (iii) the net variation margin paid or collected over the previous week with each counterparty.[5] The new margin data element would be duplicative with what is being proposed in the Capital Requirements Proposed Rule.

In 2017, the NFA implemented market and credit risk reporting obligations for SDs in an effort to understand an SD's risk profile. The NFA collects from each SD in its Monthly Risk Data Report a list of the SD's 15 Largest Swaps Counterparty Current Exposures before collateral and net of collateral. Under the NFA's Risk Data Report, SDs must report the metrics as of the last business day of the reporting month, and reports must be filed by the last business day of the following month. As such, SDs are subject to robust monthly market and credit risk reporting obligations that include data on collateral and periodic audits by the NFA which include reviews of an SD's risk profile. These audits ensure collateral is sufficient to reduce systemic risk.[6] Rather than implementing new swap daily reporting requirements, the CFTC should align its data requirements with those already in effect under the NFA's reporting and audit requirements to reduce duplication.

The Commission also seeks comment on whether margin and collateral information for cleared and uncleared transactions should be collected at the portfolio or transaction level. To the extent the Commission moves forward with new margin and collateral reporting obligations, it should allow for reporting at the portfolio level. BPEC manages its margin at the portfolio level and includes within the portfolio different forms of

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posted or received by a swap counterparty to margin, guarantee, or secure a swap, as specified in appendix 1 to part 45.

[4] *Capital Requirements of Swap Dealers and Major Swap Participants*, 81 Fed. Reg. 91,252 at 91,280 (Dec. 16, 2016).

[5] *Id*.

[6] The effectiveness of initial and variation margin calculations is routinely and regularly evaluated by the Risk Management Unit, as required by the Risk Management Rules. CFTC Rule 23.600 imposes comprehensive oversight of risk management functions, including margin calculations. For example, CFTC Rule 23.600(c)(7) requires monitoring of compliance with the Risk Management Program, and CFTC Rule 23.600(e) requires review and testing on at least an annual basis, including analysis of the company's adherence to and the effectiveness of the risk management policies and procedures. That annual testing must be performed by qualified internal audit staff that are independent of the business trading unit being audited or by a qualified third-party audit service.

collateral and numerous types of transactions with a single counterparty, such as swaps, futures, options and physical transactions. Color coding which margin relates to a single swap transaction would create confusion and would require BPEC and others in the industry to redesign trading practices. Such a redesign would not result in a greater level of risk reduction or transparency, but would reduce opportunities for netting counterparty margin and for offsetting the exposure of swaps against exposure from other physical and futures transactions.[7] For these reasons, the Commission should not require transaction-level reporting of margin and collateral.

III. Designation of Dealing/Hedging Swaps

The Commission should not require market participants to differentiate individual swaps by category for similar reasons described above. In question 36, the CFTC asks whether it should require reporting counterparties to indicate whether a specific swap was entered into for dealing (as opposed to hedging, investing, or proprietary trading) purposes and whether it should be considered in calculating the *de minimis* threshold to determine whether the market participant is a swap dealer.

When tracking dealing activity for purposes of calculating the *de minimis* threshold, BPEC designates all third-party swaps as dealing-swaps and, after the fact, may exclude certain sections of a portfolio that clearly represent hedging. This is because most market participants manage their swap transactions on a portfolio basis; therefore, it may be impractical to deconstruct individual transactions neatly into buckets of dealing, hedging, investing or proprietary trading. Also, physical energy markets are dynamic, and the character of an individual trade may change when it is placed in the context of a larger portfolio. Requiring market participants to tag each transaction as dealing or hedging would limit current flexibility to change the character of a swap and manage risks at the portfolio level; therefore, the Commission should avoid such requirements.

IV. Reporting Affiliate Data

The Commission should take this opportunity to simplify Part 45 and exclude inter-affiliate swaps from reporting. This would increase the quality of data being reported. The Commission has already excluded inter-affiliate swaps from the Part 43 real-time reporting rule.[8] In addition, the Commission's Division of Market Oversight (DMO) and Division of Clearing and Risk (DCR) have jointly granted No-Action relief for end users

[7] Many energy companies use an ISDA Master Agreement with physical commodity annexes to govern all physical and financial energy commodity transactions with the same counterparties. This allows netting of exposures across all such transactions, thereby reducing each party's exposure to the other under such agreement. The CFTC expressly allows for calculation of necessary margin, collateral, or other credit obligations based on netting across all such transactions under a master netting agreement.

[8] *Real-Time Public Reporting of Swap Transaction Data*, 77 Fed. Reg 1182 at 1187 (Jan. 9, 2012) (finding that reporting affiliate transactions is costly for market participants and there are "no price discovery benefits to publicly disseminating such transactions.")

from having to report their intra-group swaps to an SDR under parts 45, 46, and regulation 50.50(b) of the Commission's regulations.[9] Further, Europe recently amended the European Market Infrastructure Regulation (EMIR) to exempt from reporting affiliate transactions where at least one of the counterparties is a non-financial counterparty.[10] The Commission similarly should exclude not just end users, but all market participants from the requirement to report inter-affiliate transactions under Part 45.

Inter-affiliate transactions are internal to a corporate group and, as such, do not provide for increased price transparency in the market. They do not raise the systemic risk concerns that Dodd Frank is intended to address because they do not create additional counterparty exposure outside of the corporate group, and do not increase interconnectedness between third parties. Rather, inter-affiliate transactions are the internal, risk management transactions between a centralized business unit formed to manage corporate risk and affiliated counterparties. Inter-affiliate transactions help promote safety and soundness by permitting centralized risk management and limiting the extent of credit exposures to third parties. As such, inter-affiliate swaps should be exempt from swap data reporting requirements under Part 45 of the CFTC's regulations.

V. Unique Transaction Identifiers (UTI)

The Commission is proposing to amend Sec. 45.5 to require each swap to be identified by a UTI in all recordkeeping and swap data reporting. BPEC supports aligning reporting requirements across jurisdictions, which allows for global aggregation of data and should lower the cost for SDRs. To this end, it is more efficient to have SDRs like ICE Trade Vault continue managing the process for generating UTIs, even for off-facility swaps, and be responsible for coordinating identification of which jurisdiction has the earliest regulatory reporting deadline and use of that jurisdiction's UTI. Otherwise, the process would be highly inefficient with individual reporting parties having to chase their counterparties across the globe to obtain UTI information.

VI. Counterparty Reporting

The Commission seeks comments on whether reporting counterparties should report parent and ultimate parent information for each swap traded or in regularly updated (e.g., monthly or quarterly) reference files maintained by SDRs. While BPEC agrees it may not be onerous to report its own parent and ultimate parent data, BPEC does not support the designated reporting party being required to obtain and consolidate parent

[9] CFTC Letter No. 13-09, No-Action Relief for Swaps Between Affiliated Counterparties That Are Neither Swap Dealers nor Major Swap Participants from Certain Swap Data Reporting Requirements Under Parts 45, 46, and Regulation 50.50(b) of the Commission's Regulations (April 5, 2013).

[10] Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 published in the Official Journal of the EU on 17 June 2019.

and ultimate parent information for each counterparty with respect to each reported transaction. Such a requirement would force reporting parties to engage in outreach to counterparties to request, attempt to collect, and keep up-to-date ownership data for counterparties.

Parent and ultimate parent data is available through Legal Entity Identifier (LEI) reference data; therefore, SDRs should leverage this data. As such, SDRs should maintain a reference file with this information gathered from LEI reference data rather than having it reported for each swap traded.

VII. Large Trader Reporting for Physical Commodity Swaps

In question 37, the Commission asks whether it should sunset Part 20 reporting pursuant to Sec. 20.9 now that SDRs are processing reported data. This reporting obligation was initially designed as a stop-gap mechanism to collect swap data before SDRs came online. Given that SDRs have now been processing positional data for several years, the Commission should no longer expend its and the industries' resources on Large Trader Reporting, and should instead focus on improving the data submitted to SDRs by market participants and identifying ways to utilize the SDR data for the benefit of the Commission and the market.

Conclusion

BPEC appreciates the opportunity to comment in this proceeding, and respectfully requests Commission support for the requested modifications. Please contact the undersigned, Christine Stevenson, at 713-323-0199 if you have any questions regarding BPEC's submission.

Respectfully submitted,

<u>/s/Christine Stevenson</u>
Christine Stevenson
Chief Compliance Officer, BP Energy Company

cc: Honorable Heath P. Tarbert (Chairman)
Honorable Brian D. Quintenz (Commissioner)
Honorable Rostin Behnam (Commissioner)
Honorable Dawn DeBerry Stump (Commissioner)
Honorable Dan M. Berkovitz (Commissioner)