



September 7, 2022

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: Notice of Intent to Revise Swap Data Recordkeeping and Reporting Requirements (OMB Control No. 3038-0096) and Real-Time Public Reporting (OMB Control No. 3038-0070) to add a Swap Data Error Correction Notification Form

Dear Mr. Kirkpatrick:

Please accept these comments from BP Energy Company (“BPEC”) in furtherance of the U.S. Commodity Futures Trading Commission’s (“CFTC” or “Commission”) June 24, 2022 Notice of Intent to Revise Recordkeeping and Reporting Requirements and Real-Time Public Reporting requirement to add a Swap Data Error Correction Notification Form (“Notification Form”).¹ BPEC, located 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. 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. Therefore, BPEC would be required to submit the Notification Form in the event a reporting error could not be corrected within the seven-day window.

The world increasingly wants and needs energy that is secure, affordable, and lower carbon. Consequently, bp is advocating for policies that support net zero. One of bp’s aims to get the world to net zero is to be recognized as an industry leader for the transparency of our reporting. For example, bp has worked constructively with the Task Force on Climate-related Financial Disclosures (TCFD) and the Sustainability Accounting Standards Board (SASB) to develop good practices and standards for transparency and has publicly supported the Securities and Exchange Commission (SEC) adopting appropriate new disclosure requirements relating to specific climate change metrics where these would lead to disclosure of information that is relevant to the registrant and useful to investors.

The following comments on the Swap Data Error Correction Notification Form endeavor to ensure the Commission’s reporting requirements result in accurate, complete, and high-quality data.

¹ Notice of Intent to Revise Collection 3038-0096 (Swap Data Recordkeeping and Reporting Requirements) and Collection 3038-0070 (Real-Time Public Reporting) (June 24, 2022), available at <https://www.cftc.gov/LawRegulation/FederalRegister/publicinformationcollectionrequirements/2022-13485.html>.

I. Background:

As of December 5, 2022, the CFTC amended Parts 43 and 45 to require a SEF, DCM, or reporting counterparty to notify staff if it will not be able to correct a reporting error within seven business days after discovery.² The notification must be made within 12 hours of the determination that the SEF, DCM, or reporting counterparty will fail to timely correct the error. Unless otherwise instructed, that notification shall include “an initial assessment of the scope of the error or errors” discovered and “any initial remediation plan for correcting the error or errors, if an initial remediation plan exists.”

To govern the error correction notification process, the CFTC has proposed a Swap Data Error Correction Notification Form and seeks comments, including:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

II. Comments: Ways to enhance the quality, usefulness, and clarity of the information to be collected

BPEC supports the goal of ensuring the accuracy of reporting data and has implemented systems and processes to ensure reporting errors are corrected as soon as practicable. Generally, BPEC is able to make these corrections within the seven-day statutory deadline. BPEC, however, is concerned that in instances where it is unable to meet the seven-day deadline, the length and detail of the Commission’s proposed Notification Form will make it difficult to provide accurate and complete information within a twelve-hour timeframe. For example, report errors that cannot be fixed within the seven-day deadline often involve a lot of systems work to figure out the extent of the reporting error, the cause and how to fix it.

Generally, for the first seven days after discovering an error, all the reporting party’s time and attention is focused on identifying and correcting the reporting errors. A reporting party will not be able to shift its focus to filling out the Notification Form until the seventh day when it determines it will be unable to meet the deadline and, at that point, twelve hours is insufficient to provide the level of detail contained in the Notification Form. **At a minimum, Questions 3, 7 and 10-14 should be stricken or be applied only after a materiality threshold is met and after allowing sufficient time to perform the necessary analysis.**

The Notification Form will be filed with the Commission and, as written, will require a commitment to certain actions; therefore, errors on the Notification Form could have compliance

² 17 CFR 45.14(a)(1); 17 CFR 43.3(e)(1).

implications separate and above the original reporting errors. As a result, a reporting party will not be able to complete Questions 10-14 (describing the event, providing a remediation plan, committing to a statement whether new errors are being created, and defining which reporting obligations are implicated) without legal and senior level review as well as IT support, sometimes across multiple time zones.

Further, Question 7 may be difficult to answer without a detailed review, especially if the reporting error involves a large-scale event, such as where the valuations and daily marks are inaccurate. In this case, the reporting party may not know which transactions are implicated within the time allotted.

Finally, Question 3 requires, if the notification concerns error(s) relating to data previously reported to a Swap Data Repository (“SDR”), a listing of the Unique Swap Identifiers and/or Unique Transaction Identifiers. It will be difficult to provide this information within the twelve-hour timeframe if the error involves numerous transactions and coordination with the SDR to obtain this information.

To resolve these concerns, BPEC requests the Commission set a materiality threshold and only require details beyond Questions 1, 2 and 4-6 when the threshold is met. Even if certain reporting errors cannot be resolved within seven days, most of them would not rise to the level of being material to the market. It would make sense for the CFTC to adopt the two-tiered approach similar to the approach taken by the EPA on its centralized web-based eDisclosure portal ([EPA's eDisclosure | US EPA](#)). The EPA uses this portal for self-disclosed civil violations of environmental law. The EPA adopts levels of disclosures, with Category 1 being resolved automatically and Category 2 being subject to additional screening. The reporting entity starts the process 21 calendar days after discovering the error and certifies compliance 60 days after discovering the error.

The Commission should set an initial notification involving Questions 1, 2 and 4-6 within the first twelve hours. Questions 1, 2 and 4-6 will provide the Commission with sufficient notice of a reporting error while, at the same time, allowing the reporting party sufficient time to work with the SDR and the Commission to research the scope of the error and a proper remediation plan.

If a materiality threshold is met (e.g., if the error involves a significant market impact, large notional value, or a large number of errors), then the reporting party should be required to answer Questions 3, 7 and 10-14 within a more reasonable time frame, such as the 21-day period adopted by the EPA. A more reasonable 21-day period for detailed disclosure would enable reporting parties to focus on curing the violations timely and not shift their attention towards filling out the form.

III. Conclusion

BPEC appreciates the opportunity to comment in this proceeding, and respectfully requests Commission support for the requested modifications. Please contact the undersigned, Lisa Sterba, at 346-428-1722 if you have any questions regarding BPEC’s submission.

Respectfully submitted,
/s/ Lisa Sterba
Lisa Sterba
Chief Compliance Officer, BP Energy Company