

153 FERC ¶ 61,048
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Rice Energy Marketing LLC

Docket No. RP15-1089-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued October 15, 2015)

1. On June 29, 2015, Rice Energy Marketing LLC (Rice) requested a declaratory order from the Commission finding that the exemption from the prohibition on buy/sell transactions for asset management agreements (AMAs) provided in Order No. 712¹ applies to supply AMAs on the same basis as delivery AMAs. For the reasons discussed below, the Commission clarifies that the buy/sell prohibition adopted in Order No. 636² is not applicable to volumes of natural gas which the asset manager in a supply AMA purchases from its releasing shipper and then resells to that shipper.

¹ *Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, FERC Stats. & Regs. ¶ 31,284 (2008), *order on reh'g*, Order No. 712-B, 127 FERC ¶ 61,051 (2009).

² *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

I. Background

A. The Prohibition on Buy/ Sell arrangements

2. The Commission adopted its capacity release program as part of the restructuring of natural gas pipelines required by Order No. 636. The capacity release program permits firm shippers to release their capacity to others when they are not using it, thus promoting the efficient use of pipeline capacity throughout the year. In order to provide greater assurance that transfers of capacity from one shipper to another were transparent and not unduly discriminatory, the Commission required that all capacity release transactions be conducted through the pipeline, pursuant to the posting and bidding requirements set forth in the Commission's regulations.³ Once a capacity release is consummated, the replacement shipper enters into a contract directly with the pipeline, and the pipeline posts the details of that contract on its internet website in the same manner as it posts the details of its other contracts.⁴

3. In Order No. 636, the Commission adopted several safeguards to ensure that the requirements of the capacity release program are not evaded. First, the Commission maintained its prior requirement that the shipper must have title to any gas that it ships on the pipeline. Second, Order No. 636⁵ and a companion order in *El Paso*⁶ prohibited shippers from engaging in buy/sell arrangements. In Order No. 636, the Commission described buy/sell arrangements as those where a "LDC [Local Distribution Company]

³ The capacity release regulations set forth in 18 C.F.R. § 284.8 (2015), require pipelines to post on their internet websites the relevant details of all firm contracts, including contracts with replacement shippers.

⁴ 18 C.F. R. § 284.13(b)(1) (2015).

⁵ Order No. 636, FERC Stats. & Regs. ¶ 30,939 at 30,416-17 ("After a pipeline's capacity release mechanism goes into effect, no new buy-sell deals may be executed after that date and thereafter all allocations of interstate pipeline capacity must be done under the capacity releasing mechanism.").

⁶ *El Paso Natural Gas Co.*, 59 FERC ¶ 61,031 ; *reh'g denied*, 60 FERC ¶ 61,117 (1992) (*El Paso*). As the Commission stated, "[T]raditionally, a buy/sell transaction is a commercial arrangement whereby a shipper holding interstate pipeline capacity buys gas at the direction of, on behalf of, or directly from another entity (e.g., an end-user), ships that gas through its interstate pipeline capacity, and then resells an equivalent quantity of gas to the downstream entity at the delivery point." Capacity Transfers on Intrastate Natural Gas Pipelines, 133 FERC ¶ 61,065 at P 8 (2010) (citing, 59 FERC ¶ 61,031 at 61,080 (1992)).

will purchase gas in the production area from an end-user or a merchant designated by an end-user” and then “the LDC will ship the gas on its own firm capacity and sell the gas to the end-user at the retail delivery point.”⁷ In Order No. 636-B,⁸ the Commission clarified that the buy/sell prohibition applies to all firm capacity holders, including producers and marketers, as well as LDCs. The Commission found that permitting buy/sell arrangements “would provide a major loophole” from the requirement that all capacity release transactions be conducted through the pipeline, “potentially inviting substantial circumvention of the capacity release mechanism.”⁹

B. Order No. 712 and AMAs

4. In Order No. 712, the Commission sought to improve the efficiency of the capacity release market by, among other things, revising its regulations and policies to accommodate and facilitate AMAs, under which a capacity holder releases some or all of its pipeline capacity to an asset manager.¹⁰ The Commission found that AMAs provide significant benefits to many participants in the natural gas and electric marketplaces and to the secondary marketplace itself. The Commission explained that AMAs maximize the utilization and value of pipeline capacity by creating a mechanism for capacity holders to use third party experts to manage their pipeline capacity, as well as provide other services to the releasing shipper. Finding that AMAs result in ultimate savings for end-use customers by providing for lower gas supply costs and more efficient use of the pipeline grid, the Commission exempted AMAs from the competitive bidding

⁷ Order No. 636, FERC Stats. & Regs. ¶ 30,939 at 30,416.

⁸ 61 FERC ¶ 61,272, at 62,002 (1992). *See also, In re: BP Energy Co.*, 121 FERC ¶ 61,088, at P 14 (2007).

⁹*El Paso*, 59 FERC at 61,080.

¹⁰ The Commission stated that in general, “AMAs are contractual relationships where a party agrees to manage gas supply and delivery arrangements, including transportation and storage capacity, for another party. Typically a shipper holding firm transportation and/or storage capacity on a pipeline or multiple pipelines temporarily releases all or a portion of that capacity along with associated gas production and gas purchase agreements to an asset manager. The asset manager uses that capacity to serve the gas supply requirements of the releasing shipper, and, when the capacity is not needed for that purpose, uses the capacity to make releases or bundled sales to third parties.” Order No. 712, FERC Stats. & Regs. ¶ 31,271 at P 110.

requirements of our capacity release regulations¹¹ and from the Commission's prohibition on tying a capacity release to any extraneous conditions.¹²

5. Order No. 712 approved two types of AMAs: (1) delivery AMAs and (2) supply AMAs. A delivery AMA is used by an entity, such as a LDC, which purchases natural gas for use in its business and holds capacity on a pipeline for the purpose of transporting that gas to its facilities. That entity establishes a delivery AMA by releasing its pipeline capacity to an asset manager, typically a marketer. The releasing shipper may also assign its natural gas purchase contracts to the asset manager. The asset manager commits to deliver gas to the releasing shipper when the releasing shipper calls upon it to do so. When the releasing shipper does not need natural gas, the asset manager is expected to maximize the value of the released capacity, either by using it to make bundled sales to third parties or to release the capacity to third parties. A delivery AMA typically includes a provision for the asset manager to share its revenues from these activities with the releasing shipper.

6. A supply AMA is used by an entity which is in the business of producing and/or selling natural gas and which holds firm capacity on a pipeline for the purpose of transporting that natural gas for sale in the market area. That entity establishes an AMA by releasing its pipeline capacity to an asset manager, typically a marketer. The releasing shipper may also assign its natural gas sales contracts to the asset manager. The asset manager commits to purchase natural gas from the releasing shipper when the releasing shipper calls upon it to do so. The asset manager then uses the released capacity to transport that gas to delivery points where it is sold. When the releasing shipper does not need the asset manager to take its natural gas, the asset manager is expected to maximize the value of the released capacity in the same manner as the asset manager in a delivery AMA.

7. Typically, the asset manager in a supply AMA markets the gas it purchases from the releasing shipper to third parties, and nets back to the releasing shipper a fixed percentage of the price that the asset manager is able obtain for resale of the gas on a delivered basis. As described below, in this proceeding, Rice raises the issue whether the releasing shipper in a supply AMA can hire an asset manager solely for the purpose of managing its pipeline capacity, while the releasing shipper continues to market its own gas.

8. The regulations adopted by Order No. 712 provide that, in order to qualify for the AMA exemption from bidding and the prohibition on tying, a delivery AMA must include "a condition that the releasing shipper may call upon the replacement shipper to deliver to . . . the releasing shipper a volume of gas up to 100 percent of the daily contract

¹¹ Order No. 712, FERC Stats. & Regs. ¶ 31,271 at P 132.

¹² *Id.* P 127.

demand of the released” capacity for a period of five months per year.¹³ A supply AMA must include the same condition, except that the releasing shipper would call upon the replacement shipper to purchase the relevant volume of gas from the releasing shipper, rather than deliver it to the releasing shipper.¹⁴

C. Buy/Sell Exemption

9. In addition to exempting both delivery AMAs and supply AMAs from bidding and the prohibition on tying, Order No. 712 also established an exemption from the prohibition on buy/sell arrangements. The issues raised by Rice’s request for declaratory order are (1) whether Order No. 712 granted this exemption only to delivery AMAs or to both delivery and supply AMAs and (2) if Order No. 712 granted this exemption only to delivery AMAs, whether the Commission should nevertheless hold that the prohibition on buy/sell transactions does not apply to supply AMAs. Accordingly, to resolve these questions we must review Order No. 712’s discussion of this issue.

10. In comments on the NOPR leading to Order No. 712, some commenters stated that they wished to enter into AMAs “whereby they would release their capacity to an asset manager, but would continue to negotiate their own gas purchase contracts.”¹⁵ As described in Order No. 712, the commenters then explained: “[b]ecause such gas supply contracts would be competitively negotiated arrangements containing confidential pricing information, these commenters do not want to assign such contracts to the asset manager. Instead, they want to sell the gas they purchase from their supplier to their asset manager and then direct the asset manager to transport the gas to their city gate and resell the gas to them. These commenters ask that the Commission exempt such arrangements from the Commission prohibition on buy/sell arrangements.”¹⁶

11. In response to these comments, Order No. 712 granted “an exemption from the buy/sell prohibition for AMAs that qualify for the exemptions from bidding and tying, but only for volumes of gas delivered to the releasing shipper.”¹⁷ The Commission stated

¹³ 18 C.F. R. § 284.8(h)(3) (2015).

¹⁴ Order No. 712, FERC Stats. & Regs. ¶ 31,271 at P 152, explained that this purchase requirement was necessary so that the asset manager would comply with the shipper-must-have-title rule when it uses the released capacity to transport natural gas received from the releasing shipper.

¹⁵ *Id.* P 163.

¹⁶ *Id.*

¹⁷ *Id.* P 165.

that, consistent with its objective of facilitating the development of efficient and beneficial AMAs, this exemption would “permit shippers to hire an asset manager solely for the purpose of managing their interstate pipeline capacity, while they continue to purchase their gas supplies from a different marketer under contracts which they do not assign to the asset manager.”¹⁸

12. Order No. 712 also stated that the commenters had explained that “the marketer having the best terms and price for asset management services is not always the marketer who is able to supply the gas commodity at the lowest cost”¹⁹ and those marketers may be in direct competition with each other, both in the asset management field and in the commodity supply area. The Commission stated that “[s]uch competition helps the end-user obtain the lowest possible delivered cost for its gas supplies.”²⁰ However, the Commission recognized that the releasing shipper may prefer not to assign “its gas purchase contracts to the marketer providing asset management services for their pipeline capacity because this would reveal competitively sensitive information concerning the commodity prices offered by the other marketer.”²¹ However, the releasing shipper could avoid this result by entering into a buy/sell transaction, in which the releasing shipper would purchase the gas commodity from someone other than its asset manager and sell that gas to the asset manager who would then use the released capacity to transport the gas to the shipper and resell the gas to the shipper at the delivery point.

13. Order No. 712 then explained:

This exemption will not undercut the Commission’s goal in adopting the prohibition on buy/sell arrangements of preventing circumvention of the capacity release program. As we have previously explained, capacity releases to an asset manager differ from other releases, because the releasing shipper is not releasing unneeded capacity, but capacity that will continue to be used to serve its own supply function during the term of the release. The purpose of the buy/sell transactions at issue here is to permit the releasing shipper to negotiate its own gas purchase arrangements with a third party, while having its asset manager transport the gas over the released capacity to the releasing shipper. Thus, the asset manager’s purchase from the releasing shipper and resale to that shipper enables the released capacity to be used to meet the releasing shipper’s own gas

¹⁸ *Id.*

¹⁹ *Id.* P 166.

²⁰ *Id.*

²¹ *Id.*

requirements and is a condition of the capacity release. This is unlike the buy/sell transactions prohibited by Order No. 636, where the purchases, transportation, and re-sales were for the purpose of meeting the gas requirements of a third party, and there was no capacity release to any participant in the transactions. While, here, the asset manager would be buying gas from, and reselling it to, the releasing shipper, the capacity release to the asset manager would be done in accordance with the Commission's capacity release regulations and as such, would be transparent to the market. The parties would need to comply with all the notice and posting provisions currently in place. Further, the Commission has found that AMAs are beneficial to the secondary gas markets. By providing a limited exemption from the buy/sell prohibition for AMAs, the Commission is further facilitating the flexibility of AMAs and promoting enhanced competition in the capacity release market.²²

D. Rice's Petition

14. In its petition for declaratory order, Rice requests that the Commission clarify that the above described section of Order No. 712 granted an exemption from the prohibition on buy/sell arrangements not only to delivery AMAs but also to supply AMAs. Rice asserts that the Commission expanded its AMA definition in Order No. 712 to include supply AMAs so that shippers that are also gas sellers, primarily producers and marketers, could take advantage of the benefits of AMAs. Rice states that while Order No. 712 made clear that such supply AMAs were included in the definition of AMAs, and thus eligible for the exemptions from the prohibition against tying and the requirement for competitive bidding, the order did not make clear whether supply AMAs were also exempt from the buy/sell prohibition.

15. Rice states that commenters in the Order No. 712 proceeding requested an exemption from the buy/sell prohibition for AMAs under which a shipper would be able to sell gas it purchased from its supplier to its asset manager and then direct the asset manager to transport the gas to its city gate and to resell the gas to it. Rice states that the Commission granted this exemption but only for volumes of gas delivered to the releasing shipper. Rice states that the Commission observed that the grant of such an exemption was consistent with the Commission's objective of facilitating the development of efficient and beneficial AMAs, and that it would "permit shippers to hire an asset manager solely for the purpose of managing their interstate pipeline

²² *Id.* P 167.

capacity, *while they continue to purchase their gas supplies* from a different marketer under contracts which they do not assign to the asset manager.”²³

16. Rice asserts that, these statements made by the Commission in Order No. 712 could be read to mean that the exemption from the buy/sell prohibition was intended to apply only to AMAs entered into by shippers that release capacity subject to the asset manager’s delivery obligation (delivery AMAs) but not to supply AMAs subject to the asset manager’s purchase obligation. However, Rice contends that nothing in Order No. 712 indicates that the Commission intended the exemption from the buy/sell prohibition to apply only to delivery AMAs. Rice argues that the Commission only discussed the example of downstream end users requesting exemption from the buy/sell prohibition but that it did not specifically state that supply AMAs would be excluded from this exemption, and the Commission did not explain why supply AMAs would be exempt from the tying and bidding exemptions but not from the buy/sell prohibition.

17. Rice asserts that the Commission’s grant of its request would eliminate uncertainty concerning whether the Order No. 712 exemption from the buy/sell prohibition applies to supply AMAs. Rice asserts that this uncertainty deters it from entering into certain gas purchase and sale transactions that price signals in the marketplace would otherwise make economic and also provides a disincentive for the wider use of supply AMAs.

18. Rice states that a confirmation that the Commission’s exemption applies to supply AMAs would ensure that supply side shippers on interstate pipelines, such as producers and marketers, are accorded the same rights and opportunities as delivery side shippers, such as LDCs, and such confirmation also meets the goals of Order No. 712 because it would encourage more flexible use of pipeline capacity in the secondary market, resulting in lower gas supply costs, savings for end-use customers and more efficient use of the pipeline grid.

19. In addition, Rice maintains that its request, if granted, would be consistent with the intent of Order No. 712, in that the exemption of AMAs from the buy/sell prohibition would apply to all AMAs on the same basis. Rice argues that Order No. 712 suggests that the Commission did not intend to provide special exemptions only for delivery AMAs. Rice points out that the Commission specifically found “the purchase obligation in a supply side AMA is a mirror image of the delivery obligation required by the Commission for the downstream AMAs facilitated in the NOPR.”²⁴ Rice asserts that if this is so, then supply AMAs must also be afforded an exemption from the buy/sell prohibition for the volumes of gas purchased from the releasing shipper.

²³ *Id.* (emphasis added by Rice).

²⁴ *Id.* P 151.

20. Moreover, Rice asserts that the rationale for granting an exemption to the buy/sell prohibition is the same for both supply and delivery AMAs. Such an exemption for a supply AMA permits a producer or its marketer to hire an asset manager for the purpose of managing its pipeline capacity while it continues to have the option to sell its gas supply to different customers downstream of its released capacity under contracts which it does not assign to the asset manager. Rice maintains that this flexibility allows a producer or its marketer to lock in a market and hedge production against price decreases in the same manner that an LDC may lock in its supply under long-term agreements with various suppliers to hedge against price increases. Rice asserts that for supply AMAs, the exemption should apply to volumes of gas purchased from the releasing shipper, and for delivery AMAs the exemption should similarly apply to volumes of gas delivered to the releasing shipper.

21. Rice argues that such an interpretation of the scope of the Order No. 712 exemption would comport with the reasons the Commission has given for the buy/sell prohibition and the special treatment accorded to AMAs and it would benefit end-use customers by making the secondary market more efficient. In this vein, Rice argues that the purpose of the Commission's buy/sell prohibition is to prevent circumvention of the capacity release rules, specifically its rules requiring competitive bidding and prohibiting tying. Rice asserts that exempting supply AMAs from the buy/sell prohibition cannot lead to any circumvention of those rules because Order No. 712 expressly exempts supply-side AMAs from the Commission's tying and bidding requirements.

22. In addition, Rice adds that supply AMAs, like delivery AMAs, would remain subject to the Commission's posting and notice provisions of the capacity release regulations (as they apply to AMAs), and as such, would be transparent to the market. Accordingly, Rice requests that the Commission clarify that the exemption of AMAs from the buy/sell prohibition applies to all AMAs on the same basis: for supply AMAs, the exemption applies to volumes of gas purchased from the releasing shipper, and for delivery AMAs it applies to volumes of gas delivered to the releasing shipper. Rice asserts that removing this uncertainty will benefit end-use customers by increasing competition, liquidity, and the efficiency of the natural gas market.

E. Public Notice and Comments

23. Public notice of the instant filing was issued with interventions due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2015)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2015)), all timely filed motions to intervene and any unopposed motions to intervene out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Tenaska Marketing Ventures (TMV), TrailStone NA Logistics, LLC Independent Oil & Gas Association of West Virginia, Inc. and Pennsylvania Independent Oil & Gas Association, and EDF Trading North America, LLC filed comments supporting the filing.

24. TMV asserts that it supports Rice's request but does not share Rice's conviction that Order No. 712 is unclear with respect to applicability of the buy-sell exception to supply-side AMAs. TMV states that supply AMAs under which the releasing shipper and its asset manager undertake buy/sell transactions are and have been a common feature of the AMA landscape since the inception of Order No. 712. TMV asserts that in articulating its AMA policy, the Commission acknowledged that parties might wish to enter into delivery or supply AMAs, but otherwise never suggested it had a different AMA policy depending upon whose capacity was to be managed and therefore TMV questions the need for a generic clarification of Order No. 712.

25. TMV argues that Order No. 712, stated that, "[T]he Commission grants an exemption from the buy/sell prohibition for AMAs that qualify for the exemptions from bidding and tying, but only for volumes of gas delivered to the releasing shipper."²⁵ TMV asserts that this language permits supply AMA participants to engage in buy/sell transactions under which the asset manager buys the releasing producer's gas, transports it on the producer's released capacity under the AMA, and then redelivers this gas to the releasing producer who then serves its downstream customer. TMV points out that while end user AMA participants may seek to preserve confidential commercial information by segregating their relationships with gas suppliers from their relationship with their asset manager, so too may producer AMA participants wish to preserve such confidential commercial information by segregating their supply relationships with their buyers from their relationship with their asset manager. TMV asserts that this symmetry of purpose is the very essence of the "mirror image" concept the Commission has discussed above. TMV argues that Order No. 712 evinces a policy of encouraging *all* AMAs, and discriminatorily denying to supply-end shippers the same capacity-rationalization tools made available to end-use shippers is fundamentally incompatible with that purpose.

II. Discussion

26. For the reasons discussed below, the Commission finds that Order No. 712 only discussed and granted an exemption from the buy/sell prohibition with respect to delivery AMAs. However, the Commission also finds that Order No. 712's rationale for holding that the buy/sell prohibition adopted in Order No. 636 is not applicable to delivery AMAs applies equally to supply AMAs. Accordingly, the Commission clarifies that buy/sell transactions in which the releasing shipper in a supply AMA sells its natural gas to its asset manager, the asset manager transports the gas over the released capacity, and the asset manager then resells the natural gas to the releasing shipper are not buy/sell transactions of the type prohibited by Order No. 636.

²⁵ TMV Comments at 3(citing Order No. 712, FERC Stats. & Regs. ¶ 31,271 at P 165).

27. As described above, delivery AMAs are used by releasing shippers which *purchase* natural gas for use in their business, typically LDCs and large consumers of natural gas such as industrial users of natural gas. Accordingly, when a releasing shipper enters into a delivery AMA, it releases to its asset manager the capacity on the pipeline which it previously obtained for the purpose of transporting such purchased natural gas to the delivery point where it receives that gas into its facilities. Supply AMAs, by contrast, are used by releasing shippers which *sell* natural gas, typically producers and marketers. Accordingly, when a releasing shipper enters into a supply AMA, it releases to its asset manager the capacity on the pipeline which it previously obtained for the purpose of transporting its natural gas to the delivery points where its sales to its customers took place.

28. The comments of the participants in the Order No. 712 proceeding requesting an exemption from the buy/sell prohibition raised that issue solely within the context of delivery AMAs. The commenters explained that they wanted to hire an asset manager to manage their pipeline capacity, while they continued to “negotiate their own gas *purchase* contracts.”²⁶ They sought the exemption from the buy/sell prohibition in order to keep confidential the price terms they negotiated with their natural gas supplier. They explained that the exemption would allow them to “sell *the gas they purchase from their supplier* to their asset manager and then direct the asset manager to transport the gas *to their city gate* and resell the gas to them.”²⁷ Thus, these comments focused on delivery AMAs entered into by releasing shippers who purchase natural gas for use in their business and who release to the asset manager pipeline capacity which they had obtained for the purpose of transporting their purchased natural gas to the delivery points where the gas is received into their facilities (in the case of LDCs, their “city gate”).

29. The Commission’s discussion in Order No. 712 granting the exemption from the buy/sell prohibition also focused solely on delivery AMAs. For example, the Commission stated that exemption from the buy/sell prohibition would “permit shippers to hire an asset manager solely for the purpose of managing their interstate pipeline capacity, while they continue to purchase their gas supplies from a different marketer under contracts which they do not assign to the asset manager.”²⁸ Order No. 712 further explained that “the purpose of the buy/sell transactions at issue here is to permit the releasing shipper to negotiate its own gas *purchase* arrangements with a third party, while having its asset manager transport the gas over the released capacity to the releasing shipper. Thus, the asset manager’s purchase from the releasing shipper and resale to that

²⁶ Order No. 712, FERC Stats. & Regs. ¶ 31,271 at P 163 (emphasis supplied).

²⁷ *Id.* (emphasis supplied).

²⁸ *Id.* P 165.

shipper enables the released capacity to be used to meet the releasing shipper's own gas requirements and is a condition of the capacity release."²⁹ Order No. 712 found that this was unlike the buy/sell transactions prohibited by Order No. 636, in which "the purchases, transportation, and re-sales were for the purpose of meeting the gas requirements of a third party, and there was no capacity release to any participant in the transactions."³⁰ Thus, in granting the exemption from the buy/sell prohibition, Order No. 712 again focused on delivery AMAs entered into by releasing shippers who (1) purchase natural gas to serve their own gas requirements and (2) release to the asset manager pipeline capacity obtained for the purpose of transporting their purchased natural gas to the delivery point where the gas is received into their facilities.

30. While Order No. 712 only discussed and expressly granted an exemption from the buy/sell prohibition with respect to delivery AMAs, the Commission nevertheless finds that the buy/sell prohibition is inapplicable to volumes of natural gas which the asset manager in a supply AMA purchases from its releasing shipper and then resells to that shipper. As described above, Order No. 712's decision to exempt delivery AMAs from the buy/sell prohibition adopted in Order No. 636 rested on a finding that the exempted transactions did not constitute buy/sell transactions of the type prohibited by Order No. 636. The same is true of the corresponding transactions conducted pursuant to a supply AMA.

31. Order No. 636 prohibited buy/sell transactions in which a holder of capacity on an interstate pipeline permits a third party to use its capacity for the third party's own business purposes, without the capacity holder releasing the capacity to the third party pursuant to the capacity release regulations. The capacity holder would do this by buying the third party's gas, transporting that gas over the capacity holder's capacity, and then reselling the gas to the third party, thus evading the requirements of the capacity release regulations.

32. No such evasion of the capacity release regulations occurs in the supply AMA transactions described in Rice's petition. Capacity releases to an asset manager in a supply AMA, as in a delivery AMA, differ from other capacity releases, because the releasing shipper is not releasing unneeded capacity, but capacity that will continue to be used for the same purpose for which the releasing shipper in the supply AMA originally purchased it – to transport its natural gas to market. The purpose of the buy/sell transactions at issue here is to permit the releasing shipper in a supply AMA to negotiate its own natural gas sales arrangements, while having its asset manager transport the gas over the released capacity to the delivery point where the releasing shipper has agreed to make its sale to its purchaser. Thus, the asset manager's purchase from the releasing

²⁹ *Id.* P 167.

³⁰ *Id.*

shipper at the receipt point and resale to that shipper at the delivery point enables the released capacity to be used in order to carry out the releasing shipper's sale of its natural gas to its purchaser, consistent with the releasing shipper's original purpose in purchasing the pipeline capacity. This is unlike the buy/sell transactions prohibited by Order No. 636, where the purchases, transportation, and re-sales are for the purpose of accomplishing the business objectives of a third party, not the capacity holder, and there is no capacity release to any participant in the transactions. While, here, the asset manager is buying gas from, and reselling it to, the releasing shipper, the capacity release to the asset manager is done in accordance with the Commission's capacity release regulations and as such is transparent to the market. As Rice recognizes, the parties are required to comply with all the notice and posting provisions in the Commission's regulations.

33. The Commission concludes that buy/sell transactions in which the releasing shipper in a supply AMA sells its natural gas to its asset manager, the asset manager transports the gas over the released capacity, and then resells the natural gas to the releasing shipper are not buy/sell transactions prohibited by Order No. 636. This holding is consistent with the Commission's policy of providing parties the flexibility to negotiate the most efficient AMA arrangements to fit their needs.³¹ As the Commission held in Order No. 712, AMAs help maximize the utilization and value of pipeline capacity, by creating a mechanism for capacity holders to use third party experts to manage their pipeline capacity, as well as provide other services to the releasing shipper.

The Commission orders:

The petition for declaratory order is granted to the extent discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³¹ *Id.*