UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

REDACTED PUBLIC VERSION

June 14, 2011

George S. Cary, Esq.
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2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1801

Re: The Dow Chemical Company/Rohm & Haas
Docket No. C-4243

Dear Mr. Cary:

This letter responds to the Petition of The Dow Chemical Company To Reopen And Modify Order ("Petition To Reopen") filed by The Dow Chemical Company ("Dow") on February 14, 2011. The Federal Trade Commission ("Commission") has considered Dow's Petition To Reopen, as well as the affidavits filed with it by Dow. For the reasons stated here, the Commission has denied Dow's Petition To Reopen, and has also denied Dow's request for a further extension of time to divest.

On March 31, 2009, the Commission issued the Order by consent to remedy the effects on competition in markets in North America from the acquisition by Dow of Rohm & Haas Company. The Order requires, *inter alia*, Dow to divest assets and businesses relating to the research, development, manufacture, sale, and distribution of acrylic acid monomers and latex polymers to an acquirer approved by the Commission in a manner approved by the Commission. See generally, Order ¶¶ III.A. and related definitions. The Order requires Dow to divest these assets and businesses at "no minimum price." Id.

The assets that the Order requires Dow to divest include the Torrance Facility located in Torrance, CA. The Torrance Facility is defined by the Order to include "all of [Dow's] right, title and interest in Facility Assets" located at the real property described in Exhibit 5 to the Order. See Order ¶ I.XXX. The Order defines Facility Assets to mean, "all real property interests, including rights, title, and interests to and in owned or leased property," as well as fixtures, machinery, and equipment located at the facility. See Order ¶ I.LL. Generally described, the Torrance Facility includes Dow's latex polymers plant, but also a parcel leased to Praxair Company ("Praxair") and three smaller lots not presently used by Dow.

The Order required Dow to complete this divestiture within 240 days after the Commission accepted the Agreement Containing Consent Order for public comment. The Commission accepted the consent agreement for public comment on January 23, 2010. Accordingly, Dow should have divested the acrylic acid monomers and latex polymers assets and businesses by November 29, 2009.

Dow filed an application on August 14, 2009, seeking the Commission's approval to divest Dow's acrylic acid monomers and latex polymers businesses to Arkema Inc. ("Arkema"). Dow proposed to lease the latex polymers plant and the real property used for it to Arkema, and retain all ownership and other rights to the Torrance Facility not leased or granted to Arkema. The Commission's staff and Dow's counsel discussed the variance between the proposed lease and the Order's requirement that Dow sell all of its rights to the Torrance Facility.

On November 10, 2009, while Dow's divestiture application was still pending, Dow filed a petition to reopen and modify the Order to relieve Dow of its obligation to divest outright the Torrance Facility, which would thereby conform the Order to the divestiture Dow had negotiated with Arkema. Dow withdrew this petition on December 11, 2009, and requested instead that the Commission extend the time for Dow to divest the Torrance Facility as required by the Order for at least one year. Dow stated that Dow, "is prepared to divest the entire property in order to consummate the divestiture . . . as quickly as possible."[1]

On January 20, 2010, the Commission approved Dow's application to divest the acrylic acid monomers and latex polymers businesses to Arkema. In its letter informing Dow that it had approved the divestiture, the Commission also extended the time to divest the Torrance Facility, as requested by Dow, to one year from the date Dow closed on the divestiture to Arkema. Dow closed on the divestiture to Arkema on January 25, 2010. Accordingly, under the extension granted by the Commission, Dow was required to divest the Torrance Facility (less the leasehold rights already conveyed to Arkema) by January 25, 2011.

Dow still has not completed the divestiture of the Torrance Facility as required by the Order, notwithstanding the one year extension granted by the Commission on January 20, 2010. In the months prior to the expiration of the extended divestiture deadline, the Commission's staff alerted Dow many times that if Dow intended to seek a modification of the Order's divestiture obligation or a further time extension it should do so before the January 25, 2011, extended divestiture deadline.

On February 14, 2011, Dow filed its Petition To Reopen. Dow asks the Commission to reopen and modify the Order pursuant to Rule 2.51 of the Commission's Rules of Practice to relieve Dow of its obligation to divest, or in the alternative, to extend again the time to divest the

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[1] Dow also had represented in the Agreement Containing Consent Order that Dow "can accomplish the full relief contemplated by" the Order. See Agreement Containing Consent Order ¶ 11. Dow's representation that it could accomplish the relief required by the Order included its ability successfully to divest the Torrance Facility.

Torrance Facility, this time for an additional three years. Dow contends that the Order should be reopened and modified on grounds of both changed circumstances and the public interest. Dow's Petition To Reopen fails to make the required showing that the Order should be reopened either due to changed conditions of fact or law or on public interest grounds. Dow also fails to show good cause why the Commission should grant it another extension of time to divest.

STANDARD FOR REOPENING AND MODIFYING FINAL COMMISSION ORDERS

Section 5(b) of the FTC Act, 15 U.S.C. § 45, provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" require such modification. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 4, 1986), at 4; *See* S.Rep. No. 96-500, 96th Cong. 2d Sess. 9 (1979)(significant changes or changes causing unfair disadvantage); *Phillips Petroleum Co.*, Docket No. C-1088, 78 F.T.C. 1573, 1575 (1971)(no modifications for changes reasonably foreseeable at time of consent negotiations); *Union Carbide Corp.*, Docket No. C-2902, 111 F.T.C. 748, 751 (1988)(must show changes in statutory or decisional law that have the effect of bringing the provisions into conflict with existing law, so that to continue the order would work an injustice, citing, *System Federation No. 91 v. Wright*, 364 U.S. 642 (1961)).[2]

The Commission may also modify an order pursuant to Section 5(b) when, although changed circumstances would not require reopening, the Commission determines that the public interest requires such action. Thus, Rule 2.51 of the Commission's Rules of Practice invites respondents in petitions to reopen to show how the public interest warrants the modification. In the case of a request for modification based on public interest grounds, a petitioner must make a *prima facie* "satisfactory showing" of a legitimate public interest reason or other reasons justifying the requested modification.

The language of Section 5(b) plainly anticipates that the burden is on the petitioner to make the requisite satisfactory showing to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, other than by conclusory

[2] In an earlier petition to reopen and modify by *Union Carbide Corp.*, the Commission had refused to reopen and modify its order prohibiting Union Carbide from engaging in exclusive dealing arrangements, on the basis of a change in law, because exclusive dealing arrangements always were considered under the rule of reason and "Carbide's asserted changes in law, at most, reflect a shift in focus among the several factors traditionally considered under a rule of reason analysis as applied to exclusive dealing." 108 F.T.C. 184, 186 (1986).

statements, why the public interest requires that the order should be modified.[3] If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one given the public interest in the finality of Commission orders. *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981)(strong public interest considerations support repose and finality).

DOW'S PETITION TO REOPEN FAILS TO SHOW CHANGED CIRCUMSTANCES THAT REQUIRE REOPENING AND MODIFYING THE ORDER

Dow represents in its Petition To Reopen that its inability to find any buyer for the property is a changed circumstance from a year earlier. Petition To Reopen at 17. However, the circumstances that Dow claims make the Torrance Facility more difficult to sell have not changed significantly, except as created by Dow related to its failure to divest its entire interest in the Torrance Facility in the first instance.

Dow first asserts that there is very little land available to develop because the Honeywell property splits the Torrance Facility into two portions, and the three remaining lots are difficult to develop. However, the location of the Honeywell property hasn't changed since the Order was issued, and in any event has not prevented Dow (and now Arkema) from operating a latex polymers plant, or Praxair from operating its plant, on the site. Of the three remaining lots (labeled by Dow as Lots A, B, and C), Dow admits that Lots B and C could be developed now, but opines that their potential would be greater if they could be combined with the lot that has been leased to Praxair since before the Order was issued. Petition to Reopen at 14-15. Although the limited land that can be developed may affect the price Dow receives, Dow has not shown that the amount of developable land has changed since the Order was issued or that the unused portions of the Torrance Facility cannot be developed.

Dow also claims that the existing Praxair and Arkema leases make the property less attractive. [redacted]
[redacted] Petition To Reopen at 14. Dow has not provided any information to suggest that the terms of the Praxair lease have changed since the Order was issued.

The Arkema lease is new since the Order was issued. [redacted]
[redacted]
[redacted]

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[3] The Commission may properly decline to reopen an order if a request is "merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979). *See also* Rule 2.51(b), which requires affidavits in support of petitions to reopen and modify.

[redacted] See Confidential Exhibit No. 2 (Building Industrial Lease between Union Carbide Corporation and Arkema Inc. (January 25, 2010) (hereinafter, "Torrance Building Lease"). [redacted] The Arkema lease was negotiated by Dow as part of Dow's effort to meet some, but not all, of its obligations, and only because Dow failed to divest the entire Torrance Facility as required by the Order. Therefore, to the extent that the lease is a changed circumstance that affects the marketability of the Torrance Facility, the change resulted solely from Dow's decision to lease rather than to sell the property.[4]

Dow contends that its pending application with the City of Torrance to subdivide the Torrance Facility so that Arkema can purchase only the land associated with the divested plant is another circumstance that discourages interest in the Torrance Facility. However, as with the Arkema lease, the pending application arose solely because Dow chose to enter into its agreement with Arkema rather than divest the entire Torrance Facility as required by the Order.[5] In addition, Dow has failed to show that the pendency of the application prevents Dow from divesting the property. The only factual support for Dow's argument that the pending subdivision complicates selling the Torrance Facility is in the Cutler Affidavit, which states that, "Potential buyers have indicated that they are not interested in the site for several reasons, including . . . the uncertainty associated with the pending subdivision under the California Subdivision Map Act." Cutler Affidavit ¶ 7.[6] Dow does not explain or support why this uncertainty dispels all interest in the Torrance Facility.

However, even if the pending application for subdivision approval complicates the sale of the Torrance Facility, this complication was created by Dow itself. And Dow represented even after it entered into these agreements with Arkema that it would be able to divest the Torrance Facility. See Letter (December 11, 2009) from George S. Cary/Dow to Donald S. Clark at 2. This changed circumstance is insufficient to support reopening the Order.

Dow also claims that poor real estate market conditions have prevented Dow from selling the property. See Petition To Reopen at 16. Although market conditions may be weak, the market for industrial properties in Los Angeles may in fact be improving. See Industrial Trends Report - Fourth Quarter 2010 Los Angeles CA, Grubb & Ellis, http://www.grubb-ellis.com/SitePages/GetFileFromDB.ashx?type=9&id=861 ("After two and a

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[4] [redacted]
[redacted]
These leases may affect the sale price of the property, but Dow has offered no evidence that they would prevent its sale completely.

[5] Dow gave Arkema an option to buy the leased plant and the land used by it, and agreed to seek approval under the California Subdivision Map Act so that Dow could get municipal approval to subdivide the Torrance Facility and Arkema could exercise its option to purchase. See Torrance Building Lease §§ 5.1, 6.1.

[6] Dow's failure to identify in its affidavits or subsequent conversations which "potential buyers" find the pending subdivision problematic prevents the Commission from verifying Dow's assertions about the reasons for the alleged lack of interest in the property.

half years of tough economic times, optimism is returning as the Los Angeles industrial market appears to have hit bottom and is now turning the corner. . . [Q]uarterly sale and lease activity also recovered in [4Q 2010], up 16 percent from the previous quarter.") If market conditions have changed since the Order was issued, they likely have *improved* since Dow consented to sell the entire parcel, making the property easier to divest. The question, nevertheless, seems to be only what price Dow would get for the facility, not that the property cannot be sold at any price.

Dow contends that these circumstances at the Torrance Facility have prevented Dow from selling it. On February 18, 2010, Dow retained CB Richard Ellis ("CBRE"), a nationally known realtor, as Dow's agent to sell the property. Petition To Reopen at 7. CBRE initially marketed the site to 10 potential bidders, but then Dow and CBRE jointly undertook to market the property after July 2010. Id. at 8. Dow acknowledges that it received "lukewarm expressions of possible interest" from some buyers, and that it continues to discuss the sale of the Torrance Facility to Arkema. Petition To Reopen at 8-9. However, Dow represents that it has not been able to reach terms with any potential buyer. Id. Dow has not submitted any affidavits to suggest that these characteristics eliminate all interest in the Torrance Facility "at no minimum price" as required by Order ¶ III.A.[7]

The Commission's staff have interviewed some of the potential buyers that Dow names in its petition, and all of those interviewed claim to be interested in the property. Dow alleges in conclusory fashion that certain possible buyers (that Dow never identifies by name) interested in the Torrance Facility could not be approved because they could not operate it in a manner that would allow Arkema to compete successfully with the divested latex polymers plant. See Petition To Reopen at 17-19.[8] In failing to allege specific facts by affidavit to establish that interested buyers lack the expertise and financial backing to operate the Torrance Facility, Dow has not made the requisite showing to support reopening the Order under Rule 2.51. Moreover, Dow's argument that it would be difficult for anyone else to operate the Torrance site to support Arkema's operations is contradicted by Dow's assertion that Dow has so little day-to-day involvement at the Torrance Facility that the Commission need not be concerned about Dow taking advantage of the landlord/tenant relationship to interfere with Arkema's competitive operation of the latex polymers plant. Compare Petition To Reopen at 17-19 to Petition To Reopen at 11-12 and 22.

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[7] Dow has not submitted any affidavit from any potential buyer to support its assertion that no buyers are interested in purchasing the Torrance Facility because of these characteristics. The Commission's staff recommended that Dow support its claims that buyers were uninterested in purchasing the property with affidavits from those buyers. See Email (January 25, 2011) from Arthur Strong to Elaine Ewing, George Cary, and Scott Pennock/Dow ("If the core of Dow's argument is that the firms contacted as potential buyers are not interested in acquiring the Torrance site at no minimum price, Dow must file affidavits from those potential buyers that contain factual allegations to support that argument.")

[8] Because Dow has failed to identify any of the potential buyers that Dow asserts could not be approved, the Commission has been unable to determine if the potential buyers interviewed by staff are among those Dow argues could not be approved.

[redacted]
[redacted].[9]
[redacted]
[redacted]
[redacted]

The Commission is not obliged to reopen and modify the Order unless Dow identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. Dow claims that it has been more difficult to find a buyer for the Torrance Facility than it thought it would be a year ago because of the characteristics of the property. Except for the pendency of the application filed by Dow with the City of Torrance for subdivision approval and the lease with Arkema negotiated by Dow, Dow has not alleged any changed circumstances whatsoever from when the Commission issued the Order. All of the other characteristics of the Torrance Facility that Dow claims makes it difficult to sell - the presence of the Honeywell parcel, the long term Praxair lease that encumbers the property, the modest amount of land available to develop - existed when Dow consented to divest the Torrance Facility and the Order was issued.

Dow also states its opinion, not supported by affidavits, that poor real estate market conditions make the Torrance Facility less attractive. However, as noted before, this may be incorrect but even if true does not support setting aside the Order. Moreover, Dow has nowhere asserted that any of these changes make the Order's divestiture obligation "harmful to competition," as stated in Section 5 of the F.T.C. Act.

Dow asserts that its difficulty in finding any buyer for the Torrance Facility "is a significant change from a year ago, when Dow had not yet marketed the site." Petition To Reopen at 17. It is difficult to understand how, if Dow had not even begun to market the site a year ago, Dow has knowledge of the pool of buyers that might have existed then. Dow has not supported this assertion with an affidavit. In any event, what is relevant is the change in circumstances since the Order issued (March 31, 2009), and not a year prior to the date the Petition To Reopen was filed (February 14, 2010). Dow has failed to establish that a significant change in circumstances eliminates the need for the Order or makes its continued application inequitable.

Accordingly, Dow has not made the requisite showing required by Section 5 of the F.T.C. Act or Rule 2.51 of the Commission's Rules of Practice to warrant reopening and modifying the Order based on changed circumstances.

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[9] Dow filed an affidavit with its Petition To Reopen stating the Arkema was not interested in purchasing the property when it negotiated the divestiture, but this affidavit is dated November 6, 2009, and is superseded by new information.

DOW'S PETITION TO REOPEN DOES NOT SHOW THAT THE ORDER SHOULD BE MODIFIED ON PUBLIC INTEREST GROUNDS

Dow argues in its Petition To Reopen that possible purchasers of the Torrance Facility may not have the experience and resources to manage the Torrance Facility to support Arkema's competitive operation of the divested latex polymers plant, and so the public interest requires that Dow be allowed to retain ownership of it and manage it. However, Dow's Petition To Reopen and the accompanying affidavits also suggest that almost any buyer could manage the Torrance Facility properly because the owner's day-to-day responsibilities at the Torrance Facility are minimal. Dow asserts that it has no day-to-day responsibilities at the Torrance Facility because Arkema provides necessary services to itself and other site occupants. Petition To Reopen at 11-12. Dow states that its only responsibilities are to maintain two environmental permits, and to make sure that property users don't interfere with each other's property rights. Id. Dow also takes the position that possible purchasers may not be qualified to operate the Torrance Facility because they would lack adequate financing.[10] Petition To Reopen at 17-19. Dow provides no affidavits identifying who the allegedly underfinanced purchasers are, or establishing that they are not qualified to own and operate the entire Torrance parcel. Therefore, Dow has not made the satisfactory showing required by Rule 2.51 that the public interest requires Dow to continue to operate the Torrance Facility.

Dow also argues that its limited role as landlord at the Torrance Facility has eliminated the need for the Order's requirement that Dow divest the Torrance Facility. However, the Commission's rationale for issuing an Order that requires Dow to divest absolutely the Torrance Facility remains valid today. If it becomes necessary for Dow to maintain or construct easements across the portion of the property where Arkema operates the divested latex polymers plant, Dow may well do this work in a manner that would affect adversely Arkema's operation of the plant. Should Arkema seek an expansion of the capacity of utility easements or other infrastructure at Torrance to support adding capacity to Arkema's latex polymers plant, Dow might cooperate less willingly with its competitor in the Complaint market than would a third party owner of the property who could only benefit from Arkema's expansion of the latex polymers plant. For these reasons, leaving in place the Order's requirement for Dow to divest the Torrance Facility promotes achieving the Order's remedy.

Dow has not made the requisite showing that Dow is the only potential owner of the Torrance Facility with the resources and experience necessary to operate the property in a manner to achieve the Order's purposes. Dow also has failed to establish that there is less risk today than when the Commission issued the Order that Dow, as Arkema's landlord, may interfere with Arkema's ability to optimize its use of the Torrance plant to compete in the Complaint market. Dow has not made an adequate showing of legitimate public interest to support reopening and modifying the Order to relieve Dow of its obligation to divest the Torrance Facility.

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[10] Dow states that it is willing to employ a third party manager to manage the site to make sure that Dow would operate it properly. Petition To Reopen at 22. If Dow could hire a manager to manage the site, so could any of the other potential purchasers.

In addition, the public interest in the repose and finality of Commission Orders is particularly strong in this case. In order to get Commission approval of its acquisition of Rohm & Haas, Dow consented to an Order requiring divestiture of the entire Torrance parcel. Dow then negotiated a divestiture to Arkema that retained Dow's ownership of the parcel and filed a petition to reopen asking the Commission to relieve Dow of its divestiture obligation. When it was unsuccessful in obtaining Commission staff support for the divestiture to Arkema with the right to keep this property, Dow withdrew its petition, representing that it was prepared to divest the entire Torrance Facility after it completed the divestiture to Arkema. Having obtained Commission approvals for the Arkema divestiture and for a one-year extension of the time to divest the Torrance Facility, Dow once more asks the Commission to relieve Dow of its obligation to sell the Torrance Facility that Dow twice before has told the Commission that it would and could sell. Absent strong countervailing reasons, the public interest is not well-served by permitting a respondent repeatedly to seek to reopen and modify a final Commission Order to obtain relief from a divestiture to which the respondent consented.

The public interest in the finality and repose of the Order in this matter is clear. Dow has repeatedly affirmed that it is willing and able to divest the entire Torrance Facility. The Commission approved the Agreement Containing Consent Order and Dow's petition to divest the acrylic acid monomer and latex polymers businesses to Arkema, at least in part, based on that promise. Dow has not shown how its ability to compete in any market would be harmed by the required divestiture, nor how competition in any other respect would be injured. Under these circumstances, the public interest in the finality of Commission Orders would not be promoted by relieving Dow of its obligation to divest the entire Torrance Facility.

Rule 2.51 of the Commission's Rules of Practice requires Dow to establish facts by affidavit to show a sufficient legitimate public interest to overcome the public interest in the repose and finality of Commission orders. Dow has failed to establish any legitimate public interest in Dow's continued ownership of the Torrance Facility, and failed to establish that the concerns that prompted the divestiture requirement no longer exist. Dow's interest in maintaining ownership of the Torrance Facility does not overcome the public interest in the finality of Commission Orders.

DOW HAS NOT SHOWN GOOD CAUSE FOR A FURTHER EXTENSION OF TIME TO DIVEST

Dow's Petition To Reopen seeks the alternative relief of a three-year extension of time to divest the Torrance Facility if the Commission denies its petition to eliminate its obligation to divest the Torrance Facility. Petition To Reopen at 23. Rule 4.3(b) of the Commission's Rules of Practice provides that, "the Commission, for good cause shown, may extend any time limit prescribed . . . by order of the Commission. [W]here a motion to extend is made after the expiration of the specified period, the motion may be considered where the untimely filing was the result of excusable neglect." The "good cause" standard is not defined by the Rules of Practice, and provides the Commission with flexibility to extend the time provided by Commission Orders for respondents to act. However, the request to extend the time period presumptively must be filed before the period expires. See Rule 4.3(b); see also, 42 Fed. Reg. 30,150 ("This rule amendment deals with the situation where a motion to extend a time limit is

itself filed out of time. In such a situation a movant will have to show that there was excusable neglect for the late filing."), *In the Matter of General Mills, Inc.*, 86 F.T.C. 687 (1975) (absent excusable neglect and substantial prejudice, extension denied where request filed late).

Dow first requested an extension of time to divest the Torrance Facility on December 11, 2009, after it negotiated an agreement with Arkema to lease rather than sell the Torrance latex polymers plant. At that time Dow requested an extension of at least one year to divest the remaining property. See Letter (December 11, 2009) from George S. Cary/Dow to Donald Clark at 2. The Commission extended the divestiture period to one year from the date that Dow closed on the divestiture to Arkema. See Letter (January 20, 2010) from Donald S. Clark to George S. Cary/Dow. Dow closed on the divestiture to Arkema on January 25, 2010, and so Dow should have divested the Torrance Facility by January 25, 2011.

Dow's request to extend the time for divestiture essentially argues that it unexpectedly has been unable to sell the Torrance Facility because characteristics of the property and a soft real estate market have made the property difficult to sell. (See discussion above). However, the characteristics of the property have not changed since Dow consented to the divestiture Order, except for some changes created by Dow that flow from Dow's failure to divest the Torrance Facility as required by the Order. In addition, Dow acknowledges that some buyers are interested in the Torrance Facility, even with the property characteristics that Dow claims make it difficult to sell. Dow has not explained or provided affidavits to show why the property hasn't sold. Indeed, the Commission's staff have spoken with several potential buyers identified by Dow who represent that they continue to be interested in buying the property at some price. It thus appears these factors may affect the sale price of the Torrance Facility more than the availability of buyers. The Order requires, however, that Dow divest the assets "at no minimum price." Order ¶ III.A.

Dow has therefore not made a sufficient showing of good cause to extend the time for divestiture of the Torrance Facility. Dow has argued that the Torrance Facility is harder to sell than it expected. It has not, however, offered any support for that assertion or explained what it will be able to do to sell the assets in the coming year that it could not have done in the past year. There appear to be several interested buyers for the property.[11] However, Dow appears unwilling or unable to negotiate the sale of the property despite the extension of time already granted by the Commission that extended the divestiture period from November 27, 2009, to

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[11] As a separate matter, Dow filed its request for an extension of time about three weeks after the end of the divestiture period. Rule 4.3(b) of the Commission's Rules of Practice provides that the Commission may extend any time limit prescribed by an Order "for good cause shown," except that when a motion to extend is made after the expiration of the specified period, the requester must also show "excusable neglect" for failing to file before the period expired. Dow has not provided any facts or argument to explain why Dow did not request an extension before the extended divestiture period expired. Therefore, Dow has not made any showing that its failure to request on time an additional extension of the divestiture period resulted from excusable neglect.

January 25, 2011. Dow has had an adequate opportunity to divest the Torrance Facility. Good cause to extend the divestiture deadline is lacking.

Accordingly, the Commission denies Dow's request for a second extension of the divestiture period. Dow has failed to establish good cause for the extension, nor excusable neglect for failing to request an additional extension before the expiration of the divestiture period.

By direction of the Commission.

Donald S. Clark
Secretary