

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**TIFFANY SUTERS**

v.

**PECO ENERGY COMPANY**

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**DOCKET NO. F-2010-2204886**

**NOTICE TO PLEAD**

*To: Tiffany Suters*

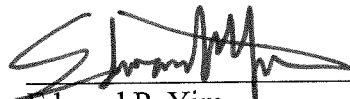
Pursuant to 52 Pa. Code §§5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion for Judgment on the Pleadings within 20 days from service of this notice, the facts set forth by PECO Energy Company may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Edward P. Yim, and where applicable, the Administrative Law Judge presiding over the issue.

Failure to respond to this Motion could result in the dismissal of your case.

File with:  
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

With a copy to:  
Edward P. Yim  
Stevens & Lee  
1818 Market Street, 29<sup>th</sup> Floor.  
Philadelphia, PA 19103

Dated February 2, 2011



Edward P. Yim  
Dana Pirone Carosella  
Stevens & Lee  
1818 Market Street, 29<sup>th</sup> Floor.  
Philadelphia, PA 19103  
Tel. (215) 751-1955  
Fax (610) 988-0852  
epy@stevenslee.com  
dpc@stevenslee.com

COUNSEL FOR PECO

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**TIFFANY SUTERS**

v.

**PECO ENERGY COMPANY**

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**DOCKET NO. F-2010-2204886**

**MOTION FOR JUDGMENT ON THE PLEADINGS**

PECO Energy Company ("PECO"), pursuant to 52 Pa. Code §5.102, respectfully requests that your Honorable Commission dismiss the instant complaint inasmuch as Complainant requests a payment arrangement. No factual dispute has been raised in the pleadings. Pursuant to 66 Pa.C.S. §1405(c), Complainant is ineligible for a Commission-ordered payment agreement, and thus Complainant fails to state a claim upon which relief can be granted. Therefore, PECO is entitled to judgment as a matter of law.

1. On October 5, 2010, Complainant filed a Formal Complaint against Respondent, PECO, requesting to receive a Commission-ordered payment agreement. A copy of Complainant's Formal Complaint is attached hereto as Exhibit 1.

2. PECO was served with the Formal Complaint on October 18, 2010.

3. On November 8, 2010, PECO filed an Answer, New Matter and Notice to Plead. A copy of PECO's Answer and New Matter is attached hereto as Exhibit 2.

4. PECO averred in its New Matter that Complainant was enrolled in its Customer Assistance Program (CAP) in 2003 and was last recertified on July 8, 2008. New Matter ¶10.

5. PECO also averred that Complainant was given a Commission-issued payment agreement in 2004 that she defaulted on by not paying. New Matter ¶11.

6. PECO further averred that it issued Complainant three payment agreements in 2005, 2006, and 2008, all of which were defaulted on because she failed to pay. New Matter ¶¶12-14.

7. PECO averred that the account was closed in November 2009 because of nonpayment and that a final bill was issued for \$5,075.01, all of which are CAP arrears. New Matter ¶10, ¶15.

8. As the entire balance consists of CAP arrears, PECO averred that no agreement may be issued under 66 Pa.C.S. §1405(c). New Matter ¶17.

9. To date, almost 90 days have passed since PECO filed its New Matter.

10. PECO has not been served with a response to its New Matter, and therefore it requests that the facts stated therein be deemed admitted. 52 Pa.Code §5.63(b) (providing that facts in new matter may be deemed admitted if there is no reply).

11. Under 66 Pa.C.S. §1405(c), the Commission is precluded from establishing a payment agreement for customers participating in CAP. Section 1405(c) states as follows: “Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission.”

12. The Commission’s regulations at 52 Pa. Code §5.102(a) permits any party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing. Under 52 Pa. Code §5.102(d)(1), the presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.

13. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983).

14. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of the case exists, a hearing is unnecessary. *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d. 557 (Pa. Cmwlth. 1989).

15. The pleadings in this case reveal the following:

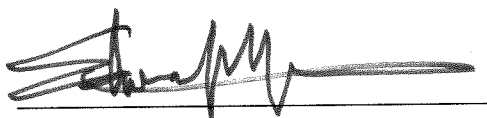
- a. There is no factual dispute that (a) Complainant was enrolled in CAP, (b) the entire past due balance is CAP arrears, (c) she broke one Commission-issued payment agreement and three PECO payment agreements, and (d) the sole relief Complainant seeks is a Commission-ordered payment agreement.
- b. Under 66 Pa.C.S. §1405(c), the Commission is prohibited from ordering a payment agreement for an account holder whose past due balance consists of CAP arrears. Therefore, the Commission cannot grant the sole relief Complainant seeks.

16. Because no factual dispute exists and the Complaint fails to state a claim for which relief can be granted, PECO is entitled to judgment as a matter of law.

**WHEREFORE**, PECO Energy Company respectfully requests that your

Honorable Commission dismiss the instant complaint with prejudice, as it relates to a request for a prohibited payment agreement on CAP arrears, and the Complaint therefore fails to state a claim upon which relief can be granted.

Respectfully submitted,



Edward P. Yim  
Dana Pirone Carosella  
Stevens & Lee  
1818 Market Street, 29<sup>th</sup> Floor.  
Philadelphia, PA 19103  
Tel. (215) 751-1955  
Fax (610) 988-0852  
epy@stevenslee.com  
dpc@stevenslee.com

Michael A. Gruin  
Stevens & Lee  
17 North 2<sup>nd</sup> Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101  
Telephone: 717-234-1090  
Facsimile: 717-234-1099  
mag@stevenslee.com

COUNSEL FOR PECO

Tishekia Williams  
PECO Energy Company  
2301 Market Street, S23-1  
PO Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-6841  
Fax: 215.568.3389  
tishekia.williams@exeloncorp.com

Dated: February 2, 2011

Commonwealth of Pennsylvania :  
: SS  
County of Philadelphia :

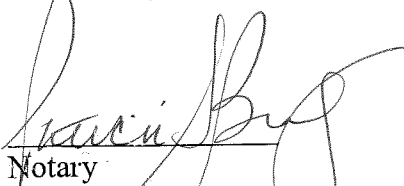
**AFFIDAVIT**

I, Edward P. Yim, being duly sworn according to law, depose and say I am agent of PECO Energy Company and have been authorized to make this affidavit on its behalf and that the facts set forth in the foregoing Motion are true and correct to the best of my knowledge, information and belief, and PECO Energy Company expect to be able to prove the same at any hearing hereof.

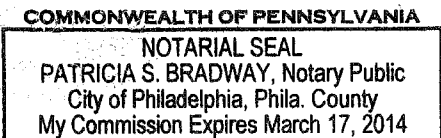


Edward P. Yim, agent of PECO Energy Company

Sworn and subscribed before me  
this 2nd day of February, 2011

  
Notary

My Commission Expires:



# Exhibit 1

COPY

time

BCS: 2708136  
PECO ENERGY  
Must be returned by October 12, 2010

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print or type.

F-2010-2204886

1. CUSTOMER NAME (COMPLAINANT)

Your name, mailing address, county, telephone number, utility account number and service address:

Name Tiffany Suters  
Street/P.O. Box 6833 W Girard Apt # \_\_\_\_\_  
City Philadelphia State PA Zip 19156  
County \_\_\_\_\_  
Area Code/HOME Phone 267-601-5391  
Area Code/WORK Phone \_\_\_\_\_  
Utility Account Number \_\_\_\_\_  
(from your bill)

RECEIVED  
2010 OCT -8 AM 8:51  
PA P.U.C.  
SECRETARY'S BUREAU

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name \_\_\_\_\_  
Street/P.O. Box \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

2. UTILITY NAME (RESPONDENT)

Name of utility company your complaint concerns: PECO energy

3. TYPE OF UTILITY (check one)

- ELECTRIC
- GAS
- WATER
- TELEPHONE  
(local, long distance)
- STEAM HEAT
- WASTE WATER
- MOTOR CARRIER  
(taxi, moving company, limousine)

58425  
BRADY

4. COMPLAINT (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.
- Other (explain).

B. State the facts of your complaint.

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

To whom it may concern, i have querry high peeo bill it  
i snay be five to seven years old. i cant afford to pay  
the whole bill at the time but i am willing to pay it  
in a timely matter, i have to small K. d. s.

5. RELIEF

How do you want your complaint to be resolved? Use additional paper if you need more space.

The complaint cant be resolved by given a new payment  
arrangement on my account,

6. **PROTECTION FROM ABUSE**

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility **AND** your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES   
NO

7. **PRIOR UTILITY CONTACT**

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)   
NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. **LEGAL REPRESENTATION (IF ANY)**

If you are represented by a lawyer **in this matter** you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

E-mail Address (If Known) \_\_\_\_\_

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

I, Tiffany Suters, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Tiffany Suters  
(Signature)

10-5-2010  
(Date)

\_\_\_\_\_  
Title of authorized employee or officer

10. FILING

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 <sup>nd</sup> Floor Harrisburg, Pennsylvania 17120
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Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your complaint for your records.

# **Exhibit 2**



Business Services  
Company

**Legal Department**

Exelon Business Services Company  
2301 Market Street/S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Telephone 215.841.4000  
Fax 215.568.3389  
www.exeloncorp.com

Direct Dial: 215.841.6841

November 8, 2010

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

**Re: Tiffany Suters v. PECO Energy Company  
PUC Docket No. F-2010-2204886**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents and copies in the matter referenced above.

<u>X</u>	Answer (1 original)
—	Motion for Continuance (1 original)
—	Motion for Judgment on the Pleadings (1 original)
—	Preliminary Objection (1 original)
—	Exceptions (1 original)
—	Reply Exceptions (1 original)
—	Brief (1 original)
—	Reply Brief (1 original)

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

Tishekia Williams  
Counsel for PECO Energy Company

TW/adz  
Enc.

Scheduling recommendation: CALL OF THE DOCKET: ~~X~~ NON-CALL OF THE DOCKET:



**Legal Department**

Exelon Business Services Company  
2301 Market Street/523-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Telephone 215.841.4000  
Fax 215.568.3389  
www.exeloncorp.com

Business Services  
Company

Direct Dial: 215 841-6841

November 8, 2010

Tiffany Suters  
6333 W. Girard  
Philadelphia, PA 19151

**Re: Tiffany Suters v. PECO Energy Company  
PUC Docket No. F-2010-2204886**

Dear Ms. Suters:

Enclosed is a copy of PECO Energy Company's response to the formal complaint filed in the above-referenced docket. The law requires PECO Energy to file an answer to your Public Utility Commission complaint. Keep these papers for your records. This is not a decision on your complaint. Please note that if you do not respond to a New Matter, Motion, or Preliminary Objection an unfavorable decision may be rendered against you. Responses to New Matters and Motion must be filed within 20 days. Responses to Preliminary Objections must be filed within 10 days. If there is no New Matter, Motion or Preliminary Objection included, no response is required.

Soon, the Public Utility Commission will schedule either a settlement conference or a hearing on your complaint. The Commission will let you know by mail whether there will be a conference or a hearing and will include instructions on what to do next. If the matter is set for hearing, the notice will provide you with information about the date, time and place of the hearing. If we are unable to resolve your complaint and have to proceed with a hearing, a judge will be at the hearing and will decide your complaint. You must call the Public Utility Commission if you have any questions about the hearing or if you cannot attend the hearing.

Thank you for your time and attention on this matter.

Very truly yours,

Tishekia Williams  
Counsel for PECO Energy Company  
TW/adz  
Enc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TIFFANY SUTERS	:	
Complainant	:	
	:	
v.	:	Docket No. F-2010-2204886
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**NOTICE TO PLEAD**

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**To: *Tiffany Suters***

You are hereby notified to file a written response to the attached Answer and New Matter of PECO within twenty (20) days from the date of service of this notice. If you do not file a written response denying or correcting the enclosed New Matter within twenty (20) days of service, the facts set forth by PECO may be deemed to be true, thereby requiring no other proof, and judgment may be entered against you. All pleadings, such as responses to New Matter, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

You must also serve a copy of your response on the undersigned counsel for PECO. Failure to respond to this Answer and New Matter could result in the dismissal of your case.



Tishekia Williams  
2301 Market Street, S23-1  
PO Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-6841  
Fax: 215.568.3389  
tishekia.williams@exeloncorp.com

DATE: November 8, 2010

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TIFFANY SUTERS	:	
Complainant	:	
	:	
v.	:	Docket No. F-2010-2204886
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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**ANSWER TO COMPLAINT AND NEW MATTER  
OF PECO ENERGY COMPANY**

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On October 18, 2010, PECO Energy Company ("PECO") was served with a formal Complaint from Tiffany Suters ("Complainant"), in the above captioned Docket Number. Pursuant to 52 Pa Code § 5.61, PECO hereby responds to the Complaint of the Complainant as follows:

**ANSWER**

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied. The Complainant is responsible for paying the unpaid balance in full. To the extent the allegations contained in Paragraph 4 constitute conclusions of law or ultimate fact to which no responsive pleading is required, they are as such deemed denied.
5. Paragraph 5 is a Request for Relief and no answer is required. As set forth above, the Complainant is responsible for the payment of the unpaid balance on her

PECO account. To the extent the allegations contained in Paragraph 5 require a further answer, such allegations are denied.

6. Denied. PECO is without knowledge or information sufficient to form a belief as to the truth of this averment and, therefore, such allegation is deemed denied.

7. Admitted.

**NEW MATTER**

8. PECO incorporates by reference responses contained in Paragraphs 1 through 7 above as though fully set forth at length.

9. PECO is represented in this matter by:

Michael A. Gruin  
Stevens & Lee  
17 North Second Street  
16th Floor  
Harrisburg, PA 17101  
Telephone: 717-255-7365  
Facsimile: 610-988-0852  
mag@stevenslee.com

Tishekia Williams  
PECO Energy Company  
2301 Market Street, S23-1  
PO Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-6841  
Fax: 215.568.3389  
tishekia.williams@exeloncorp.com

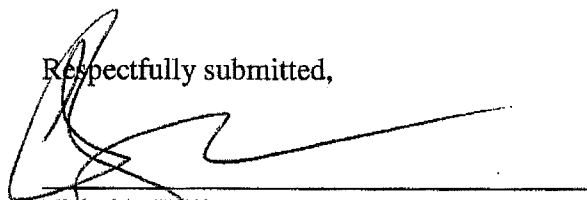
10. Service at 5441 Hunter Street, Philadelphia, was established in Complainant's name on July 3, 2003. Complainant was enrolled in PECO's Customer Assistance Program ("CAP"), tier D, on October 6, 2003, and last recertified on July 8, 2008 based on income of \$967.98 for 1 adult and 2 children (65% FPL). The entire balance is CAP arrears.

11. Complainant was granted a Commission-issued payment agreement by the Bureau of Consumer Services, case number 1725078 on September 9, 2004. The agreement defaulted due to nonpayment.
12. On January 25, 2005, Complainant was granted another payment agreement by PECO Energy to settle a Formal Complaint filed at docket number Z-01725078.
13. PECO issued another payment agreement on March 28, 2006, which was renegotiated on June 30, 2006. The agreement defaulted due to nonpayment on July 31, 2007.
14. PECO issued another payment agreement on July 10, 2008, which defaulted on June 2, 2009.
15. On November 3, 2009, the account was closed and a final bill issued for the amount of \$5,075.01.
16. On July 6, 2010, Complainant applied for service at 6333 W. Girard Avenue, Philadelphia, PA. Due to the prior defaulted payment agreements, Complainant was informed that she must satisfy the existing outstanding balance prior to receiving service.
17. As the balance consists entirely of CAP arrears, no agreement should be issued. 66 Pa.C.S§1405(c).

**REQUEST FOR RELIEF**

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that the Complaint be dismissed with prejudice.

Respectfully submitted,



Tishkia Williams  
PECO Energy Company  
2301 Market Street, S23-1  
PO Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-6841  
Fax: 215.568.3389  
tishkia.williams@exeloncorp.com

Michael A. Gruin (I.D. No. 78625)  
17 North Second Street, 16th Floor  
Harrisburg, PA 17101  
Telephone: 717-255-7365  
Facsimile: 610-988-0852  
mag@stevenslee.com

Counsel for PECO Energy Company

Dated: November 8, 2010

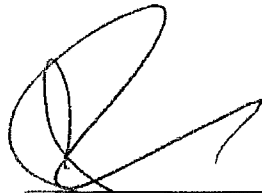
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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TIFFANY SUTERS	:	
Complainant	:	
	:	
v.	:	Docket No. F-2010-2204886
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**VERIFICATION**

I, Tishkia Williams, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.

Date: November 8, 2010

  
\_\_\_\_\_  
Tishkia Williams

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TIFFANY SUTERS  
Complainant

v.

PECO ENERGY COMPANY  
Respondent

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Docket No. F-2010-2204886

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Answer and New Matter upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA First Class U.S. Mail

Tiffany Suters  
6333 W. Girard Ave.  
Philadelphia, PA 19151



\_\_\_\_\_  
Tishekia E. Williams

DATED: November 8, 2010

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**TIFFANY SUTERS**

v.

**PECO ENERGY COMPANY**

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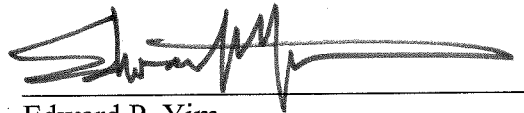
**DOCKET NO. F-2010-2204886**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Motion for Judgment on the Pleadings upon the party listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

VIA First Class U.S. Mail

Tiffany Suters  
6333 W. Girard Ave.  
Philadelphia, PA 19151



Edward P. Yim

DATED: February 2, 2011