

(As filed on November 19, 2003)

File No. 70-10135

**SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

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**FORM U-1/A**

**Amendment No. 2  
to  
APPLICATION OR DECLARATION  
under the  
PUBLIC UTILITY HOLDING COMPANY ACT OF 1935**

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**Pepco Holdings, Inc.  
701 Ninth Street  
10<sup>th</sup> Floor, Suite 1300  
Washington, DC 20068**  
(Names of companies filing this statement and  
addresses of principal executive offices)

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**PEPCO HOLDINGS, INC.**  
(Name of top registered holding company)

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**Ellen Sheriff Rogers  
701 Ninth Street  
10<sup>th</sup> Floor, Suite 1300  
Washington, DC 20068**  
(Name and address of agent for service)

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The Commission is requested to mail copies of all orders, notices and other communications to:

**Christie Day Cannon  
Assistant General Counsel  
Pepco Holdings, Inc.  
800 King Street  
Wilmington, DE 19801  
(302) 429-3826**

The Application-Declaration filed in this proceeding on June 18, 2003, as amended by Amendment No. 1 filed on September 19, 2003, is hereby amended and restated in its entirety to read as follows:

**Item 1.        Description of Proposed Transaction.**

A.            Background.

Pepco Holdings, Inc., a registered holding company (the "Applicant"), herein requests approval from the Commission pursuant to Sections 9(a)(1) and 10 of the Public Utility Holding Company Act of 1935, as amended (the "Act") to acquire a membership interest in PowerTree Carbon Company, LLC (the "Company"), a Delaware limited liability company formed to facilitate investments by the Applicant and other energy companies in forestation projects in the Lower Mississippi River Valley, and possibly other sites, as a means for removing carbon dioxide (CO<sub>2</sub>) from the atmosphere. The Applicant proposes to acquire such membership interest either directly or indirectly through one or more subsidiaries.

The Applicant directly and indirectly owns all of the outstanding common stock of Atlantic City Electric Company, Delmarva Power & Light Company, and Potomac Electric Power Company; in addition to these regulated operating utility subsidiaries, the Applicant holds, indirectly, two other subsidiaries that are public utility companies for purposes of the Act: Conectiv Delmarva Generation, Inc. and Conectiv Atlantic Generation, L.L.C. ("CAG") (collectively, the "Utility Subsidiaries"). Together, the Utility Subsidiaries provide retail and wholesale electric service to more than 1.8 million customers in parts of the District of Columbia, Delaware, Maryland, New Jersey and Virginia. The Applicant also holds, directly or indirectly, three other registered holding companies: Conectiv, Conectiv Energy Holding Company and ACE REIT, Inc. The Utility Subsidiaries and other non-regulated generating subsidiaries of the Applicant own all or portions of 24 electric generating plants in the United States having a combined generating capability of approximately 4,580 megawatts (MW).

The Company has been formed under the sponsorship of the electric utility sector in cooperation with the Department of Energy ("DOE"). The Company is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent "Climate VISION" plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. One proven means for reducing greenhouse gases is to use trees to remove CO<sub>2</sub> from the atmosphere and store it in tree biomass and roots and soil. The Bush Administration is considering, as part of its Global Climate Change program, the creation of transferable emission reduction credits for measures that reduce greenhouse gas emissions.

The Company has obtained commitments totaling approximately \$3,275,000 from approximately 25 electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas. These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO<sub>2</sub> over the projects' 100-year lifetimes. Other

benefits will include: restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to the Company will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO<sub>2</sub> per acre by years 70 and 100, respectively, at a cost of less than \$2.00 per ton.

Unlike some earlier forestation projects that U.S. electricity generators have supported in the past, the Company is being formed as a for-profit limited liability company ("LLC"), which it is believed will allow carbon or CO<sub>2</sub> reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow the members of the Company to take advantage of tax benefits of land donation. Nevertheless, although formed as a for-profit LLC, the Company is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

The Applicant is also requesting authorization pursuant to Section 12(f) of the Act to sell all or a portion of its membership interest in the Company at any time to any of its associate companies. Any sale by the Applicant of its membership interest in the Company to an associate company shall be for an amount equal to the Applicant's investment or pro rata share thereof in the case of a sale of a portion of the Applicant's membership interest. No sale to an associate company that requires approval by any other regulatory commission shall take place until such approval has been obtained.

#### B. Capital Contribution Commitments of Initial Members.

The Applicant is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to the Company. The others are Ameren Corporation, American Electric Power Company, Inc., Cinergy Corp., Dominion Resources, Inc., Entergy Corporation, Exelon Corporation, FirstEnergy Corp., Great Plains Energy Incorporated, Progress Energy, Inc., and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: Arizona Public Service Company (a subsidiary of Pinnacle West Capital Corporation), The Detroit Edison Company, Diversified Lands LLC (a subsidiary of CLECO Corporation), Duke Energy Corporation, Oglethorpe Power Corporation, Oklahoma Gas & Electric Company (a subsidiary of OGE Energy Corp.), Peabody PowerTree Investments, LLC (a subsidiary of Peabody Energy Corporation), Public Service Electric and Gas Company, PNM Resources, Inc. (the parent of Public Service Company of New Mexico), Reliant Resources, Inc., Tennessee Valley Authority, TXU Generation Company LP (a subsidiary of TXU Corp.), We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company), and Wisconsin Public Service Corporation. The amount of the commitments of the eleven registered holding companies is as follows:

Name of Registered Holding Company	Total Capital Contribution Commitment	Percentage Interest in Company
Ameren Corp.	\$100,000	3.05%
American Electric Power Co.	\$300,000	9.16%
Cinergy Corp.	\$100,000	3.05%
Dominion Resources, Inc.	\$100,000	3.05%
Entergy Corp.	\$100,000	3.05%
Exelon Corp.	\$100,000	3.05%
FirstEnergy Corp.	\$100,000	3.05%
Great Plains Energy, Inc.	\$50,000	1.53%
Pepco Holdings, Inc.	\$50,000	1.53%
Progress Energy, Inc.	\$100,000	3.05%
Xcel Energy, Inc.	\$100,000	3.05%
Total	\$1,200,000	36.64%

In the aggregate, the capital contribution commitments of the eleven registered holding companies represent approximately 35% of the commitments of all of the initial members.

#### C. Principal Terms of Operating Agreement.

Under the Company's Operating Agreement (Exhibit A hereto (the "Operating Agreement")), the business and affairs of the Company shall be managed by its Board of Managers. Each member that commits to make a capital contribution of at least \$100,000 is entitled to appoint one representative to the Board of Managers. In general, actions by the Board of Managers may be taken by a majority of the managers present at a meeting. However, certain actions of the Board of Managers or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among others actions: the sale, exchange or other disposition of any of the assets of the Company greater than \$20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the Company; capital expenditures exceeding \$20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the Company.

New members may be admitted to the Company only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members is also required for the election of officers of the Company. The members have equal voting rights, regardless of their percentage interests in the Company (as shown in the table above).

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights in the Company received or

otherwise obtained by such member equal to or exceeding 10% of the total outstanding voting rights in the Company shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such no registered holding company member will hold 10% or more of voting rights in the Company. In addition, any member may elect to limit its voting rights to less than 5% of the total voting rights in the Company, in which case the voting rights of such member or members equal to or exceeding 5% of the total voting rights in the Company would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a pro rata share of all carbon that is determined to be sequestered by the Company's efforts to which legal rights, if any, have been obtained ("Carbon Reductions") based on the member's percentage interest in the Company. A member may generally utilize such member's share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

**Item 2.        Fees, Commissions and Expenses.**

The fees, commissions and expenses incurred or to be incurred in connection with the preparation and filing of this Application/Declaration are estimated not to exceed \$2,000.

**Item 3.        Applicable Statutory Provisions.**

A.        General.

Sections 9(a)(1) and 10 of the Act are applicable to the proposed acquisition of a membership interest in the Company, as well as to the acquisition of the securities of any new subsidiary formed exclusively for the purpose of acquiring and holding the membership interest. The subsequent sale of all or a portion of the membership interest in the Company acquired by the Applicant to any associate company thereof is subject to Section 12(f) of the Act.

B.        Standards of Sections 9(a) and 10.

The transaction proposed herein involves an acquisition of securities, as well as an acquisition of an interest in another (*i.e.*, non-utility) business, and is therefore subject to the approval of this Commission under Section 10. The relevant standards for approval under Section 10 are set forth in subsections (b), (c) and (f). As applied to interests in non-utility businesses, Section 10(c)(1) of the Act provides that the Commission shall not approve an acquisition that is "detrimental to the carrying out of the provisions of section 11." Section 11(b)(1), in turn, directs the Commission to limit the operations of a holding company system to a single integrated public-utility system and such non-utility businesses as are "reasonably incidental, or economically necessary or appropriate to the operations" of its integrated system or systems. The Commission and the courts have interpreted these provisions as expressing a

Congressional policy against non-utility activities that bear no operating or functional relationship to the utility operations of the registered system.<sup>1</sup>

The Commission has previously authorized new registered holding companies to retain, under the standards of Section 11(b)(1), interests in ventures formed to invest in start-up companies that offer products or services that will generate greenhouse gas emission reductions for submission to the DOE as "Climate Challenge" credits pursuant to Title XVI of the Energy Policy Act of 1992.<sup>2</sup> Further, under Rule 58(b)(1)(ii), a registered holding company may, without the need for prior approval by the Commission (subject to certain investment limitations), acquire the securities of companies that engage in the "development and commercialization of electrotechnologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, and similar innovations." (Emphasis supplied)

The Applicant's proposed investment in the Company is intended to contribute positively to the national goal of reducing greenhouse gases through voluntary industry specific efforts. The forestation projects that the Company will fund have received strong backing from the DOE, Department of Agriculture and Department of Interior. Moreover, the proposed investment in the Company will provide the Applicant with a means to obtain carbon or CO<sub>2</sub> reduction credits, if and when such credits become available.

C. Compliance with Rule 54.

The proposed transaction is also subject to Rule 54. Rule 54 provides that, in determining whether to approve the issue or sale of any securities for purposes other than the acquisition of any "exempt wholesale generator" ("EWG") or "foreign utility company" ("FUCO") or other transactions unrelated to EWGs or FUCOs, the Commission shall not consider the effect of the capitalization or earnings of subsidiaries of a registered holding company that are EWGs or FUCOs if the requirements of Rule 53(a), (b) and (c) are satisfied. Under Rule 53(a), the Commission shall not make certain specified findings under Sections 7 and 12 in connection with a proposal by a holding company to issue securities for the purpose of acquiring the securities of or other interest in an EWG, or to guarantee the securities of an EWG, if each of the conditions in paragraphs (a)(1) through (a)(4) thereof are met, provided that none of the conditions specified in paragraphs (b)(1) through (b)(3) of Rule 53 exists.

Applicant currently does not meet the conditions of Rule 53(a). At September 30, 2003, Applicant's "aggregate investment" (as defined in Rule 53(a)(1)) was approximately \$3.0 billion. At September 30, 2003, Applicant's "consolidated retained earnings" (also as defined in Rule 53(a)(1)) were approximately \$886 million. Accordingly, at September 30, 2003, Applicant's aggregate investment exceeded 50% of its consolidated earnings, the "safe harbor" limitation contained in Rule 53(a).

<sup>1</sup> See *Michigan Consolidated Gas Co.*, 44 S.E.C. 361, 363-365 (1970), *aff'd* 444 F.2d 913 (D.C.Cir.1971).

<sup>2</sup> See *Exelon Corp.*, Holding Co. Act Release No. 27256 (Oct. 19, 2000); and *CP&L Energy, Inc.*, Holding Co. Act Release No. 27284 (Nov. 27, 2000).

However, by order dated July 31, 2002 in File No. 70-9947 (HCAR No. 27557)(the "Financing Order"), the Commission authorized Applicant to increase its aggregate investment to an amount equal to the sum of (1) 100% of consolidated retained earnings plus (2) \$3.5 billion. At September 30, 2003, based on this Commission order, Applicant could have had an aggregate investment of \$4,386 million. Therefore, although Applicant's aggregate investment at such date exceeded the 50% "safe harbor" limitation of Rule 53, it is well within the higher investment level granted by the Financing Order.

With respect to capitalization, there has been no material adverse impact on Applicant's consolidated capitalization resulting from Applicant's investments in EWGs and FUCOs. At June 30, 2001, the most recent period for which financial statement information was evaluated in the Financing Order, Applicant's consolidated capitalization consisted of 31.4% equity. At September 30, 2003, Applicant's consolidated capitalization consisted of 32.0% equity. Further, at September 30, 2003, Applicant's senior unsecured debt was rated "investment grade" by all the major rating agencies. Pursuant to the Financing Order, Applicant has committed to maintain a 30% consolidated common equity ratio, and the proposed transaction will have no adverse impact on Applicant's ability to meet that commitment.

Applicant satisfies all of the other conditions of paragraphs (a) and (b) of Rule 53. With reference to Rule 53(a)(2), Applicant maintains books and records in conformity with, and otherwise adheres to, the requirements thereof. With reference to Rule 53(a)(3), no more than 2% of the employees of Applicant's domestic public utility companies render services, at any one time, directly or indirectly, to EWGs or FUCOs in which Applicant directly or indirectly holds an interest. With reference to Rule 53(a)(4), Applicant will concurrently provide a copy of this application to each regulator referred to therein, and will otherwise comply with the requirements thereof concerning the furnishing of information. With reference to Rule 53(b), none of the circumstances enumerated in subparagraphs (1), (2) and (3) thereunder have occurred. Finally, Rule 53(c) by its terms is inapplicable since the proposed transactions do not involve the issue or sale of a security to finance the acquisition of an EWG or FUCO.

**Item 4.        Regulatory Approval.**

No state commission, and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

**Item 5.        Procedure.**

The Commission has published a notice under Rule 23 with respect to the filing of this Application/Declaration (HCAR No. 27699) and no hearing has been requested. The Applicant requests that the Commission issue an order approving the proposed transaction as soon as practicable. The Applicant further requests that there should not be a 30-day waiting period between issuance of the Commission's order and the date on which the order is to become effective, hereby waives a recommended decision by a hearing officer or any other responsible officer of the Commission, and consents to the assistance of the Division of Investment

Management in the preparation of the Commission's decision and/or order, unless the Division of Investment Management opposes the matters proposed herein.

**Item 6. Exhibits and Financial Statements.**

A. Exhibits.

- A - Draft of Operating Agreement of PowerTree Carbon Company, LLC (previously filed)
- B - None
- C - Inapplicable
- D - None
- E - Inapplicable
- F-1 - Opinion of Counsel for Applicant (previously filed)
- F-2 - Opinion of Morris, James, Hitchens & Williams, LLP (previously filed)
- G - Form of Federal Register Notice (previously filed)

B. Financial Statements.

(Deemed unnecessary because of the *de minimis* nature of the proposed transaction)

**Item 7. Information as to Environmental Effects.**

None of the matters that are the subject of this Application/Declaration involves a "major federal action" nor do such matters "significantly affect the quality of the human environment" as those terms are used in section 102(2)(C) of the National Environmental Policy Act. The transaction that is the subject of this Application/Declaration will not result in changes in the operation of the Applicant that will have an impact on the environment. The Applicant is not aware of any federal agency that has prepared or is preparing an environmental impact statement with respect to the transaction that is the subject of this Application/Declaration.



## **SIGNATURE**

Pursuant to the requirements of the Public Utility Holding Company Act of 1935, the undersigned company has duly caused this amended statement to be signed on its behalf by the undersigned thereunto duly authorized.

**PEPCO HOLDINGS, INC.**

By: /s/ T. S. SHAW

Name: Thomas S. Shaw

Title: Executive Vice President

Date: November 18, 2003