

# **BARNABY TREE TASK FORCE**

## ***FINAL REPORT***

Presented to the  
Advisory Neighborhood Commission 3/4 G

by the  
Barnaby Tree Task Force

December 13, 2004

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# BARNABY TREE TASK FORCE

## Executive Summary

### Overview

The controversy over tree removal and drastic pruning in Ward 4's Barnaby Woods and Ward 5's Rhode Island Avenue neighborhoods is the result of the inability of three bodies to coordinate their efforts and fulfill their appropriate responsibilities: 1) the *Potomac Electric Power Company (Pepco)*, a D.C. public utility with a monopoly on the distribution of electric power; 2) the *District Department of Transportation (DDOT)*, including the new *Urban Forestry Administration (UFA)*, which assumed authority over trees on public space from the Department of Public Works (DPW) in 2002; and 3) the *D.C. Public Service Commission (PSC)*, established by Congress in 1913 to regulate D.C.'s public utilities. This report explains how each party contributed to the problem, the steps taken so far, and the recommendations of the Barnaby Tree Task Force (BTTF), formed September 28, 2004, to resolve it.

### Findings of Fact

1. After neglecting routine tree-trimming, Pepco lobbied for exemptions from the Urban Forest Preservation Act of 2002 (UFPA), which it abused by removing and disfiguring healthy but overgrown trees and failing to provide for their replacement. Following 80% power outages in 2003's Hurricane Isabel, Pepco commissioned James Lee Witt Associates to study its response. The May 2004 Witt Report found that "downed trees and limbs were the single major cause for line damage"; noted "a public perception" that the outages resulted from Pepco's earlier cutbacks in tree-trimming; and recommended that "the community and Pepco. . . work to preserve healthy trees, and replace unhealthy trees with trees unlikely to cause damage in a storm." But when the PSC ordered Pepco to implement the Witt Report Sept. 15, 2004, Pepco began Sept. 20<sup>th</sup> to execute a campaign to remove healthy but overgrown trees as well as unhealthy ones. Pepco disregarded UFA instructions to adequately notify homeowners before tree work. When Ward 4 Councilmember Adrian Fenty intervened, DDOT imposed a Sept. 21<sup>st</sup> DDOT stop-work order (extended Sept. 28<sup>th</sup> for 90 days). Pepco pressure led to a temporary lifting of that order. When the PSC, Pepco's statutory regulator (again at CM Fenty's request) asked Pepco Oct. 18<sup>th</sup> for annual budget series with details of tree-trimming and line maintenance, Pepco president William J. Sim refused to supply them. Pepco also has been unable to document claims of routine tree trimming (which disagreed with neighbors' accounts at a Nov. 8<sup>th</sup> ANC 3/4 G meeting).

2. After a shaky start, DDOT is the "most improved" player. The conflict between tall trees and electric wires resulted in part from longstanding DPW forestry policies. And at first, DDOT approved Pepco's requests for wholesale tree removal. But after tests by arborists using newly available equipment, UFA determined that at least 4 and as many as 6 out of a sample of 10 trees targeted by Pepco for removal are healthy and should be saved. (It should also be noted that DDOT acknowledged that the trunks of three trees removed before the stop-work order were solid and therefore the trees should not have been removed.) DDOT issued new administrative directives to Pepco and UFA Nov. 3<sup>rd</sup> requiring advance notice to ANCs and property owners before trees are removed.

3. After crucial months as a passive spectator, the PSC has tentatively started to fulfill its responsibility for the oversight of Pepco. As noted, the PSC does not collect data in sufficient detail to determine whether Pepco is complying with its orders, nor has it yet disciplined Pepco for failing to comply. But on Nov. 19<sup>th</sup>, responding to an Oct. 29<sup>th</sup> complaint by the Office of the People's Counsel (OPC) on behalf of Leroy Hall and other residents in Ward 5's Rhode Island Avenue neighborhood (whose trees, as the complaint put it, were left looking like "demented DisneyWorld topiary"), the PSC ordered the creation of a city-wide "Tree Trimming and Maintenance" Task

Force,” with representatives from OPC, Pepco, DDOT, and the PSC. The task force has begun meeting with Deputy Mayor Herbert Tillery. It should be noted, however, that the PSC has responsibility of the oversight of Pepco and the formation of a task force, while augmenting their efforts in this area, should not absolve the PSC from their role in holding Pepco responsible for compliance. And on December 13<sup>th</sup>, the PSC formally requested the last five years of Pepco’s budget data for tree work and line maintenance in the District within (7) seven business days.

### ***BTTF Recommendations for Improvement***

#### **1. The City Council should close two major gaps in District tree law, and increase oversight of DDOT and the PSC.**

*Pepco’s blanket exemptions from the UFPA should be repealed or replaced with a process of PSC waivers of specific provisions when necessary to ensure safe, reliable and quality electric service, with utilities subject to penalties for breaking the law. The law should require that property owners within 150 feet be notified in writing at least 10 days before any major tree work. Fines for violations of the UFPA on public space should be increased. And DDOT and the PSC should be held accountable for the regulation of Pepco’s tree policies.*

#### **2. DDOT and UFA need to be a more effective stewards of the trees owned by the citizens of the District of Columbia.**

*UFA should be less reactive; scrutinize Pepco’s tree removal and pruning more closely; restructure emergency regulations until the UFPA can be amended; extend required permits for work on public space to include trees; adopt more systematic shade tree management; and embrace a leadership role on tree policy in the new city-wide task force.*

#### **3. The PSC should upgrade its regulatory oversight of Pepco.**

*Based on recent evidence, the PSC should 1) reject Pepco’s contention that it is in compliance with Order No. 13381; 2) increase PSC oversight of utility vegetation management using “incentives/penalties for compliance,” as recommended by the FERC report; 3) form an internal “ARC Team” to Avoid ‘Regulatory Capture’ by Pepco; 4) insist on Pepco supplying past and present budget data in enough detail to determine Pepco’s allocation of resources; and 5) make any lifting of rate caps on Pepco’s distribution services depend on vastly improved Pepco compliance with PSC directives and District tree law.*

#### **4. Pepco needs to change its corporate culture and commitment to accountability from the top down, beginning with action to improve its corporate relations with the D.C. citizens, who own the trees, DC government, and Pepco customers and shareholders.**

*Pepco can begin this change by 1) remembering that monopoly privileges serve the public good; 2) increasing the quality and oversight of contractors; 3) improving record-keeping by Pepco arborists of tree-work; 4) providing more useful detail of its budget to regulators, shareholders and the public; 5) funding tree-trimming more consistently; 6) spending less on lobbying to expand its monopoly privileges and, instead, paying out more dividends to shareholders; and. 7) admitting its mistakes to D.C. citizens and pledging to improve its corporate partnership with the community it serves.*

## **Pepco: Monopoly Exempt from the UFPA**

1. **Basic tree policy: the UFPA. The Urban Forest Preservation Act of 2002 (UFPA)** established a comprehensive policy on trees. It outlined the benefits of urban forest; established the Urban Forestry Administration (UFA) within the District Department of Transportation; required both a permit from the mayor and 15 days' public notification before the removal of any Special Tree (defined as greater than 55-inch circumference—except for “hazardous trees,” which must be removed); required a contribution of \$35 per inch of circumference of Special Trees removed to a tree replacement fund; and established as the penalty for violating these provisions “a fine of not less than \$100 per each inch of the circumference of the Special Tree in question.” (*See Copy of UFPA Chapter 37 Special Trees*)
2. **Pepco is exempt from key UFPA provisions.** However, the UFPA created exemptions for “public utility companies regulated by the Public Service Commission” from the requirements to obtain a Special Tree removal permit and to notify the public before removal of Special Trees.

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**Pepco is a monopoly.** Pepco distributes 100% and provides the energy for about 90% of the electricity in the District of Columbia. In other words, it is a monopoly, and is protected by law from competition. The main reason for the monopoly is presumably that it doesn't make sense for there to be more than one electric distribution system. However, the absence of competition makes a monopoly insensitive to customer service, because dissatisfied customers cannot transfer their business to another provider, as in most industries. (*See attachment Important Terms Regarding the Regulation of Monopoly.*)

3. **The Public Service Commission is Pepco's regulator.** Pepco is regulated by the D.C. Public Service Commission, which was established by Congress in 1913. PSC regulations therefore must serve the purpose normally provided by competition. The PSC describes its mission as “to serve the public interest by ensuring that financially healthy electric, gas and telecommunications companies provide safe, reliable and quality utility services at reasonable rates for District of Columbia residential, business and government customers.” Public Service Commissioner Rick Morgan told the Barnaby Tree Task Force that requiring utilities to observe District tree policy comes under “quality” of services. But the Barnaby Tree Task Force found that this view does not appear to be generally understood by PSC staff.
4. **The Witt Report on Pepco's response to Hurricane Isabel.** As a result of customer dissatisfaction over Pepco's response during and after Hurricane Isabel in September 2003, Pepco Holdings Inc. (PHI) commissioned a report from James Lee Witt Associates, which was published in May 2004. The Witt Report found “three broad and recurring themes”:
  - a. “an insufficient appreciation on the part of Pepco and [its NJ affiliate] Connectiv that the outage was a community event, not just a utilities event”;
  - b. “a need for sharper and more rapid focus on customer service. . . both day-to-day and in time of disaster”
  - c. “a need for the emergency management function to have higher priority” [pp. 1-2].Though mostly concerned with technological and communications failures, the Witt Report found that “Downed trees and limbs were the single major cause for line damage” during Isabel, and recommended that “Pepco should conduct comprehensive joint tree management programs with the communities they serve. *The combined forces of the community and Pepco and Connectiv would work to preserve healthy trees, and replace unhealthy trees with trees unlikely to damage power lines in a storm. Also, PHI might*

*consider offering suitable replacement trees to homeowners as a long-range mitigation activity, and part of a robust community partnership program” [emphasis added, p.5]. The report also laid out a comprehensive program for implementing the recommendations.*

- 5. Pepco apparently short-changed routine tree trimming for years.** The Witt Report noted that “There appears to be a public perception that Pepco has been cutting back its tree-trimming budget in recent years. Another perception seems to be that the cut-backs may have contributed to the extensive outages following Hurricane Isabel” [A-1]. However, the Witt report did not quantify the cutbacks.

At a community meeting on September 28, 2004, residents of Barnaby Woods recounted having sought PEPCO tree trimming without success. Residents could not recall routine trimming in the neighborhood for at least 20 years. Efforts to secure Pepco’s records of routine trimming have not been successful as of December 10, 2004. After twice promising to supply records documenting trimming every two years in Barnaby Woods, Pepco officials could not supply any.

The Barnaby Tree Task Force also attempted to obtain figures on Pepco’s tree-trimming budget relative to its other budget items, but Pepco would not co-operate. On October 18<sup>th</sup>, at the suggestion of the task force, Ward 4 Councilmember Adrian Fenty requested the budget data from the Public Service Commission. But the PSC did not have the information, and passed the request on to Pepco. Pepco sought at first to get CM Fenty to withdraw the request. When he did not, Pepco president William J. Sim informed Fenty through a spokesman that the company would not supply the data (though the request had come from the PSC, Pepco’s regulator, not from Fenty). As of December 10<sup>th</sup>, the PSC had not obtained the data.

According to the *Montgomery County Gazette* of January 2, 2004, Pepco reported to the Maryland Public Service Commission that “Pepco’s tree-trimming budget increased from \$2.7 million in 1998 to \$5.8 million in 2000. But after the state implemented rate caps in 2000 as part of restructuring the electrical industry, Pepco’s tree maintenance budget shrunk to \$4.2 million in 2002.”

The *Gazette* story continued, “At the PSC hearing, Pepco President William J. Sim defended the cuts, saying the utility spent aggressively on tree-trimming immediately following the 1999 ice storm. Since 2000, he said, Pepco’s contractors have grown more efficient, providing more service for less money.”

According to the *Washington Post* of September 30, 2004, “Pepco’s tree-trimming budget increased this year to \$10.3 million, up from about \$8 million in 2003, [Pepco spokesman Bob] Dobkin said.”

Thus from press accounts it appears that the experience of Hurricane Isabel caused Pepco to more than double its average tree-trimming budget from an average of about \$4.2 million in 1998-2002 to about \$9.1 million in 2003-2004.

If the increase is an approximate measure of the amount by which the preventive maintenance was short-changed in the past, Pepco saved about \$5 million dollars per year on trimming. But if so, this was a shortsighted policy, because according to the Witt Report, “Total restoration cost [for Pepco for Hurricane Isabel alone] is estimated to be \$40 million” [p. 14].

- 6. It appears that Pepco has invested in spokespersons at the expense of investing in routine tree trimming.** According to the Sept. 30<sup>th</sup> *Washington Post* article, a Pepco

spokesman had this to say: “When it comes to tree trimming, we’re damned if we do, damned if we don’t,” Pepco spokesman Bob Dobkin said before the meeting. ‘It’s always been the case that when the tree trimming trucks go into a neighborhood, they almost inevitably are met by some residents who plead with these guys to leave their trees alone. But this was also a neighborhood where we got a lot of complaints [during Isabel] because of loss of power.” Although the Post article reported that this statement was made after the meeting, Dobkins actually offered this statement before the meeting. This is noteworthy because, had he responded to residents concerns, it would have been more appropriate to state that Pepco was “damned because it didn’t.” The Witt report also found that Pepco’s efforts to communicate effectively with residents were of concern. “Pepco offered too many faces and voices to communicate with the public during the Isabel response. . . . As many as seven Pepco employees served as major spokespersons, along with various field operations representatives and repair technicians who offered quotes.” This may help explain why Pepco’s public image has suffered despite its large budget for public relations.

## **DDOT and UFA: Rectifying Past Policies & Practices**

- 7. Key changes in District tree policy: healthy trees planted under old policy to be removed under new policy.** According to DDOT forester Bill Beck on Oct. 2, 2004, two significant provisions of past D.C. forestry policy contributed to the conflict between electric wires and trees. First, for several decades it was District policy to replace downed trees with trees of the same variety, for example, to replace the oaks that predominate in Barnaby Woods by planting new oaks in their place. Second, it was also District policy that utility poles and lines be located in the same plane, which is closely aligned with that of the trees in the space between streets and sidewalks.

The combination of the two policies, compounded by Pepco’s failure to do preventive tree trimming, led to the conflict between mostly healthy trees and utility wires. The first policy was replaced two years ago with a D.C. forestry policy to replace tall trees near utility lines with smaller trees. But some red oaks were planted under the old policy, for example on Barnaby Street only three years ago. Under the new policy, all such trees will ultimately have to be removed. While some of the trees slated for removal in Barnaby Woods qualify as “hazardous” others are healthy trees planted under the old District forestry guidelines, but which now conflict under the new guidelines. As the Washington Post reported September 30, 2004: “Michelle Pourciau, deputy director of the D.C. Division of Transportation, said many of the trees targeted for removal in Barnaby Woods are in good health. However, if more than 25 percent of a tree has to be trimmed to protect the power lines, the whole tree is removed because it probably would die anyway. Many of the trees slated for removal in Barnaby Woods fall into that category, she said.”

- 8. Differentiating healthy from hazardous trees.** Pepco provided DDOT/UFA with a list of 13 trees to be removed on Barnaby, Utah and Tennyson. DDOT and Pepco foresters conferred on trees to be removed using visual observation exclusively. As a result of recommendations by the community meeting September 28<sup>th</sup>, and the subsequent “tree tour” on October 2<sup>nd</sup>, DDOT and UFA decided to use a newly acquired X-ray machine for the first time.

Pepco informed the DDOT/UFA that 13 trees on Barnaby, Utah and Tennyson had to be cut down in order for Pepco to continue its line-hardening program -- essentially a program to minimize outages on power feeder lines. A visual inspection of the trees was jointly conducted by Pepco and UFA representatives. The trees were marked for trimming, pruning or removal.

UFA told Pepco to inform the neighbors of its intentions. Some neighbors received paper notices at their doors from Pepco, some did not. But, more importantly, the notices did not mention tree removal, only trimming leading the residents to believe that the trees were only going to be trimmed or pruned. On September 20<sup>th</sup>, three (3) of these 13 trees were cut down.

On September 21<sup>st</sup>, neighbors realized that more trees were about to be cut down. Neighbors called Councilmember Adrian Fenty, who in turn, called DDOT asking them to tell Pepco to stop the cutting. The work stopped. A community meeting was then scheduled for September 28<sup>th</sup> to provide a forum for community members to voice their concerns to PEPCO, DDOT and other involved parties.

To address concerns voiced during the community forum, a tree tour was conducted in the Barnaby Woods neighborhood on October 2<sup>nd</sup>. Arborists from Pepco and UFA, along with an independent arborist recommended by Casey Trees Foundation, examined the trees together as neighbors followed along. Of the 10 trees still standing from Pepco's original list, only three (3) were conclusively agreed by all arborists to be diseased and/or dead and, therefore, truly hazardous. Regarding the remaining seven (7) trees, there were different interpretations of their health and potential hazard by the arborists.

UFA decided to use this opportunity to test a new x-ray machine the DDOT had recently acquired. On November 5<sup>th</sup>, accompanied by the independent arborist, who tested the trees using a resistograph, the new x-ray machine was used on the remaining seven (7) trees.

UFA, empowered with additional information, changed the fate of 4 of the 7 trees still in question. The other 3 trees are still being reviewed as of December 11, 2004. UFA's willingness to take a closer look at the trees targeted by Pepco has resulted in at least 4 of the 10 trees being saved. (*See attachment Chart of 13 Trees.*)

It should be noted that the comprehensive testing and study of the 10 trees targeted demonstrates that Pepco's policy regarding tree removal is inadequate. At least 40 % of Pepco's assessment of these 10 trees was wrong. The possible impact of this margin of error on the City's trees is enormous.

9. **Pepco gave no advance notice of tree removal, despite DDOT instructions.** At an Oct. 2 tree inspections, DDOT forester Bill Beck stated publicly that he had instructed Pepco forester Daniel Landry to notify nearby homeowners before the removal of any trees on public space. Ignoring this directive, Pepco began removing trees the week of September 20, 2004, without advance notice of removal to homeowners. According to the minutes of an October 13<sup>th</sup> meeting involving representatives of Pepco, DDOT, PSC and OPC (to which the Barnaby Tree Task Force was not invited), Pepco argued that "Notice, by way of door hangers, was provided to residents of the impacted area, but the first notice referred only to trimming and did not indicate that whole trees were targeted for removal. Revised notice was provided to impacted area residents which explained that in some instances whole trees would be removed." This was a misrepresentation of the notice that actually stated "If a tree needs to be removed, the property owner's permission is obtained and they are welcome to plant a new, low-growing species in its place." To further illustrate the conflicting messages forwarded by Pepco, it should also be noted that, according to the *Northwest Current*, reported on October 6, 2004, Pepco's forester maintained that Pepco had no responsibility to notify homeowners despite DDOT's clear instructions to do so since the trees between sidewalk and street belong to the District, not the homeowners: "For their part, Pepco officials said notification is the city's responsibility. 'Pepco did not contact private citizens with regard to city tree

removals because the city is responsible for the management of those trees, [Pepco forester Daniel] Landry said in an e-mail to the *Current*.”

10. **UFA needs a clear policy and standards for tree assessment.** At present, there is not a clear approach, standards and methodology for tree assessment and removal procedures in the District of Columbia. The absence of such approach and methodology has led to confusion amongst DDOT, UFA and Pepco. Moreover, it has led to subjective decision-making and the removal of trees that were in fact healthy. Continuation of the current removal strategies by UFA without sufficient evidence regarding tree health, with or without initiation by Pepco, will compromise the long-term health of the City’s trees. The Barnaby Tree Task Force examined other cities and identified clear policies and guidelines that have been developed to determine tree health and apply objective removal procedures. Information on the City of Boston and Massachusetts, is one example and is presented in Annex 1. (See *attachment Example: City of Boston Tree Management Information*)

UFA needs to establish clear and concise testing procedures for evaluating tree health. In preparing these procedures, the following must be considered: 1) UFA is solely responsible for determining the health of the trees based on industry approved standards and testing technology; 2) UFA is responsible for proper notification of the community affected from the beginning of the process through the end; and 3) Pepco or any other regulated industry must obtain a required permits for tree removal from DDOT/UFA. BTTF strongly recommends that citizens participate in the drafting and preparation of this policy.

#### **PSC: Reluctant Regulator**

11. **By law, the PSC has legal responsibility for overseeing Pepco’s management of trees.** The Barnaby Tree Task Force agrees with the assessment of the Office of the People’s Counsel, expressed in the minutes of the Oct. 13<sup>th</sup> meeting: “OPC expressed [the view] that the PSC is the statutory forum with oversight over the reliability of Pepco’s electrical system and any process developed to determine the standards for vegetation management as it relates to reliability would best be coordinated by the PSC. OPC believes that the PSC can provide the most objective, comprehensive analysis of the issue.”
12. **The PSC has been reluctant to assume its legal responsibility to regulate Pepco regarding trees.** According to the minutes of the same Oct. 13<sup>th</sup> meeting, “PSC expressed [the view] that DDOT is the statutory agency with jurisdiction over vegetation management standards. DDOT can promulgate rules that set standards for vegetation management.” However, as explained above, Pepco is specifically exempt from most DDOT regulations under the UFPA, and PEPCO has ignored DDOT’s instructions about notification before tree removal.
13. **Recent PSC Directive to Pepco.** On September 15, 2004, the Public Service Commission instructed Pepco to implement the recommendations of the Witt Report and the March 2004 FERC Report on utility vegetation management and report quarterly on its progress in doing so. As described previously, however, Pepco has failed to implement the recommendations and has, at times, defied them.
14. **Pepco used the September 15<sup>th</sup> PSC order as the pretext for a long-planned campaign.** According to a Pepco shareholder writing in the November 10, 2004, *Northwest Current*, Pepco’s chairman announced at the May 2004 annual shareholders meeting that Pepco would undertake a campaign of aggressive tree-trimming, and

dismissed the shareholder's concern about Pepco's destructive trimming practices in the past. Pepco began cutting down trees in Ward 5's Rhode Island Avenue NE and Ward 4's Barnaby Woods September 20<sup>th</sup>.

15. **The Pepco tree campaign violated the PSC order in several ways:** Rather than saving healthy trees and removing unhealthy trees as the Witt Report recommended, healthy as well as unhealthy trees were targeted in Barnaby Woods; Pepco did not provide for replacement trees as the Witt report also recommended; both the removal of healthy trees in Barnaby Woods and the "topping" of trees on Rhode Island Avenue violated ANSI A300 national trimming standards as outlined in the FERC Report.

Pepco claims to follow the ANSI A300 standard practices for pruning: *The Company's tree trimming is performed in accordance with acceptable standards and practices as outlined by the American National Standards Institute (ANSI) publication A300.* (Dec. 3, 2004, Pepco Response to PSC Order 13381, p. 3)

By topping and lion's tailing trees, as documented OPC's October 29th complaint to the PSC, Pepco clearly violated the ANSI A300 standards to which they claim to adhere. In addition, many ANSI A300 provisions were not observed. (See "*ANSI A300 Pruning Standards Relevant to Pepco's Treatment of Trees In the Barnaby Woods NW and Rhode Island Avenue NE Neighborhoods*")

In the remarks column of Pepco's Table 1 topping is listed as a management strategy for several tree species. (Pepco response, pp. 5 – 6).

The ANSI A300 standards also specify how pruning cuts should be made. Section 5.9 of the standards specifically addresses utility pruning and holds utilities to the same standards as are to be met by all arborists and tree maintenance personnel.

16. **OPC complaint.** On October 29<sup>th</sup>, the District Office of the People's Council, a kind of ombudsman on behalf of utility customers, filed a complaint to the Public Service Commission on behalf of Leroy Hall (a former Pepco employee) and other Ward 5 residents of the Rhode Island Avenue neighborhood, whose trees, as the complaint put it, were pruned like "demented Disney World topiaries." The complaint emphasizes that this is a city-wide problem, not just Barnaby Woods; that there is no coherent process for handling it; that the Public Service Commission has both the legal responsibility and authority to oversee Pepco's handling of tree; and proposes a 'D.C. Electric Reliability Tree Trimming and Maintenance Task Force'" to handle it.
17. **PSC orders city-wide Tree Trimming and Maintenance Task Force.** On November 19<sup>th</sup>, the PSC responded to the OPC complaint by ordering the creation of a city-wide working group including representatives from OPC, Pepco, the D.C. Department of Public Works and Transportation and the PSC. The group held an organizational meeting with Deputy Mayor Herbert Tillery.
18. **The PSC still does not gather Pepco's budget data in sufficient detail to assess the budget issues raised by the Witt Report.** But PSC commissioner Rick Morgan agreed that the request for Pepco's budget data about tree trimming and line maintenance is pertinent and reasonable. And on December 13<sup>th</sup>, the PSC formally requested the last five years of Pepco's budget data for tree trimming and line maintenance, which were among the requested data which Pepco's president had refused to supply when requested informally.

## **BTTF Recommendations for Improvement**

- 1. The City Council should close two major gaps in District tree law, and increase oversight of DDOT and the PSC by**
  - a. *Repealing Pepco's blanket exemptions from the UFPA, replacing them with either DDOT emergency regulations or a process of PSC waivers of specific provisions, when necessary to ensure safe, reliable and quality electric service, while holding utilities subject to penalties for breaking the law;*
  - b. *Requiring that property owners within 150 feet be notified in writing before any major tree work (suggested language for both amendments is attached);*
  - c. *Increasing fines (which were designed for trees on private property) for violations of the UFPA on public space;*
  - d. *Prodding DDOT and the PSC to regulate Pepco's tree policies.*
  
- 2. DDOT & UFA need to be a more effective steward of the trees owned by the citizens of the District of Columbia.**
  - a. *UFA should be less reactive to Pepco and scrutinize the company's tree removal and pruning more closely;*
  - b. *DDOT should restructure emergency regulations until the UFPA can be amended;*
  - c. *DDOT should extend permits for work on public space to include trees;*
  - d. *UFA should adopt more systematic shade tree management;*
  - e. *DDOT should embrace a leadership role on tree policy in the new city-wide task force by providing the tree expertise the PSC lacks and acting as a counterweight to Pepco.*
  - f. *UFA needs a clear policy and standards for tree assessment.*
  
- 3. The PSC should upgrade its regulatory oversight of Pepco by**
  - a. *recognizing that "current oversight of UVM activities. . . is inadequate" (FERC Report, p. 3);*
  - b. *rejecting Pepco's contention that it is in compliance with Order No. 13381, based on the evidence of its activities in the Rhode Island Avenue and Barnaby Woods neighborhoods;;*
  - c. *increasing its oversight of utility vegetation management using "incentives/penalties for compliance," as recommended by the FERC report;*
  - d. *forming an internal "ARC Team" to Avoid 'Regulatory Capture' by Pepco;*
  - e. *insisting on Pepco supplying past and present budget data in enough detail to determine Pepco's allocation of resources;*
  - f. *making any lifting of rate caps on Pepco's distribution services depend on vastly improved Pepco compliance with PSC directives and District tree law.*
  
- 4. Pepco needs to change its corporate culture and commitment by**
  - a. *remembering that monopoly privileges serve the public good;*
  - b. *increasing the quality and oversight of contractors;*
  - c. *improving record-keeping by Pepco arborists of tree-work;*
  - d. *providing more useful detail of its budget to regulators, shareholders and the public;*
  - e. *funding tree-trimming more consistently;*
  - f. *spending less on lobbying to expand its monopoly privileges and, instead, paying out more dividends to shareholders;*
  - g. *admitting its mistakes to D.C. citizens and pledging to improve its corporate partnership with the community it serves.*

## More Information:

Extensive background information is available from the Barnaby Tree Task Force. For additional information regarding the work of the Barnaby Tree Task Force, please go to:

<http://barnabywoods.org:8080/>

Complaint by the Office of the People's Counsel to the Public Service Commission on behalf of Leroy Hall and Ward 5 Citizens at <http://www.opc-dc.gov/>

Urban Forest Preservation Act of 2002 (D.C. Act 14-614; 50 D.C. REG 888), enacted January 31, 2003 [http://ddot.dc.gov/ufo/frames.asp?doc=/ufo/lib/ufo/ufo/pdf/ufo\\_tree\\_bill.pdf&open=|32619|](http://ddot.dc.gov/ufo/frames.asp?doc=/ufo/lib/ufo/ufo/pdf/ufo_tree_bill.pdf&open=|32619|)

FERC Utility Vegetation Management Final Report of March 2004:

<http://www.ferc.gov/cust-protect/moi/uvm-final-report.pdf>.

Pepco Holdings, Inc. Hurricane Isabel Response Assessment, Final Report, May 2004 (The "Witt Report") <http://www.wittassociates.com/upload/wysiwyg/PHIReport.pdf>

Tree Regulations - Notice of Proposed Rulemaking, November 12, 2004

[http://ddot.dc.gov/ufo/cwp/view,A,1294,Q,620049,ufoNav\\_GID,1622.asp](http://ddot.dc.gov/ufo/cwp/view,A,1294,Q,620049,ufoNav_GID,1622.asp)

Special Trees [http://ddot.dc.gov/ufo/frames.asp?doc=/ufo/lib/ufo/ufo/pdf/ch37\\_nov2004.pdf](http://ddot.dc.gov/ufo/frames.asp?doc=/ufo/lib/ufo/ufo/pdf/ch37_nov2004.pdf)

Pepco Holdings, Inc. Response to the James Lee Witt Associates Hurricane Isabel Response Assessment, May 26, 2004

[http://www.PEPCOholdings.com/news/PEPCO\\_Holdings\\_Witt\\_Response.pdf](http://www.PEPCOholdings.com/news/PEPCO_Holdings_Witt_Response.pdf)

DC Public Service Commission Order No. 13381 [to PEPCO], September 15, 2004

[http://www.dcpsc.org/pdf\\_files/commorders/orderpdf/ordno\\_13381.pdf](http://www.dcpsc.org/pdf_files/commorders/orderpdf/ordno_13381.pdf)

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"Neighbors Silence Pepco's Chain Saws: Tree Trimming Decried as Too Aggressive," by Monte Reel, *Washington Post* District Weekly, September 30, 2004, p. 3.

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"Withstanding Storms," by William J. Sim, *Washington Post*, October 21, 2004.

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"Task force faults city, Pepco on tree work," *Northwest Current*, November 10, 2004, p. 7.

"Protecting the District's Trees—and Its Power System," Elizabeth Noel, letter to the editor, *Washington Post*, November 10, 2004.

“Arborist Accurately Admonishes Pepco,” by Jonathan Strong, letter to the editor, *Northwest Current*, November 11, 2004, p. 12.

“New Device May Save Trees Near Power Lines,” *Washington Post District Weekly*, November 11, 2004

DDOT Urban Forestry Administration, description:

[http://ddot.dc.gov/ufa/cwp/view,a,1292,q,575249,ufaNav\\_GID,1624,ufaNav,\[32602\],.asp](http://ddot.dc.gov/ufa/cwp/view,a,1292,q,575249,ufaNav_GID,1624,ufaNav,[32602],.asp)

UFA mission statement, [http://ddot.dc.gov/ufa/cwp/view,a,1292,q,575228,ufaNav,\[32602\].asp](http://ddot.dc.gov/ufa/cwp/view,a,1292,q,575228,ufaNav,[32602].asp).

DC Public Service Commission Mission Statement: <http://www.dcpsc.org/abt/mission.shtm>.

Description of James Lee Witt Associates: <http://www.wittassociates.com/1162.xml>.

Description and History of the D.C. Office of the People’s Counsel: <http://www.opc-dc.gov/>

Description of Pepco: [http://www.PEPCO.com/about\\_frms.htm](http://www.PEPCO.com/about_frms.htm).

Casey Tree Foundation: <http://www.caseytrees.org>

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## **Brief Descriptions of Primary Organizations**

### **DDOT & the Urban Forestry Administration (UFA)**

The Urban Forestry Administration (UFA), formerly the Tree and Landscape Division, is located within the District Department of Transportation (DDOT). The Urban Forestry Administration's mission is to establish a full population of street trees within the District and to assure that those street trees are maintained in a healthy and safe condition. Street trees are trees located between the curb and sidewalk on all District-owned lands. Currently, an estimated 100,000 trees line the District's roadways.

UFA's administrative office is located at 1105 O Street, SE. The UFA field operations are located at 1241 W Place, NE. UFA accomplishes its work by both in-house staff and contractors. Most large-scale pruning and removal work is done via contract. Emergency and other specialized work is conducted primarily by in-house crews. Since 1999, UFA has planted 14,500 trees, pruned more than 40,000 trees, and removed approximately 7,000 dead or dying trees.

Although not yet fully developed, UFA has begun setting the stage for greater community outreach and involvement in its operations. As an example, UFA has developed relationships with local public/private partner organizations such as Green Spaces for DC, the Casey Trees Endowment Fund, Community Resources, and others, who are currently involved in tree-related work within DC's neighborhoods. By involving and encouraging community participation in tree planting and care activities, we hope to better educate residents regarding the importance and functional beauty of the District's "green infrastructure."

From [http://ddot.dc.gov/ufa/cwp/view,a,1292,q,575249,ufaNav\\_GID,1624,ufaNav,|32602|,asp](http://ddot.dc.gov/ufa/cwp/view,a,1292,q,575249,ufaNav_GID,1624,ufaNav,|32602|,asp)

### **UFA Mission Statement**

The Urban Forestry Administration's mission is to establish a full population of street trees within the District and to assure that those street trees are maintained in a healthy and safe condition. Maintaining healthy trees will contribute to improved air quality and temperature moderation in the city, as well as provide enhanced aesthetics and other benefits to our community.

From <http://ddot.dc.gov/ufa/cwp/view,a,1292,q,575228,ufaNav,|32602|.asp>

## **James Lee Witt Associates**

Founded in 2001, James Lee Witt Associates (JLWA) is a crisis and emergency management consulting firm based in Washington, DC with offices in Atlanta, Chicago, and Sacramento. JLWA has unrivaled experience and hands-on knowledge of public safety, disaster mitigation, continuity of operations, and emergency management issues. JLWA bridges government agencies and non-profits with industry and constituents, advises educational institutions, and assists state and local governments, as well as international bodies to prepare for and recover from disasters and crises.

JLWA is uniquely positioned to bring together policy architects and technical experts in public safety, with leaders from all levels of government and private sector partners to forge solutions to emergency management challenges.

The JLWA staff includes seasoned crisis and emergency management leaders with significant experience in the public sector to provide consultation on key issues of public safety. The team is proficient in the details of emergency management, committed to the responsibility of the profession, and understands how crisis and emergency management work fits into a larger political and social climate.

JLWA is comprised of two main practice areas: Crisis and Consequence Management and Strategic Advisory Services.

From <http://www.wittassociates.com/1162.xml>

## **D.C. Public Service Commission**

### **The Commission**

The Public Service Commission of the District of Columbia (Commission) is an independent District Government agency established by Congress in 1913 to regulate the electric, gas and telephone companies in the District by functioning as a quasi-judicial agency. The Commission Staff is made up of 68 persons which includes three Commissioners, one of which is designated as the Chairperson

### **Mission & Goals**

The mission of the District of Columbia Public Service Commission is to serve the public interest by ensuring that financially healthy electric, gas and telecommunications companies provide safe, reliable and quality utility services at reasonable rates for District of Columbia residential, business and government customers.

We do this by:

- Protecting consumers to ensure public safety, reliability and quality services;
- Regulating monopoly services to ensure their rates are just and reasonable;
- Fostering fair and open competition among service providers;
- Empowering consumers and protecting them from potential market power abuses;
- Resolving disputes among consumers and service providers; and
- Motivating customer –and results –oriented employees.

The Commission has identified three goals for carrying out its mission:

- Economic Development
- Public Safety
- Customer Satisfaction

From <http://dcpsc.org/abt/index.shtm> , <http://dcpsc.org/abt/mission.shtm>

## **D.C. Office of the People's Counsel**

### **Mission Statement**

The Office of the People's Counsel is an independent agency of the District of Columbia government. By law, it is the advocate for consumers of natural gas, electric and telephone services in the District. District of Columbia law designates the Office as a party to all utility-related proceedings before the Public Service Commission. The Office also represents the interests of District ratepayers before federal regulatory agencies. The Office is authorized to investigate the operation and valuation of utility companies independently of any pending proceeding and is also empowered to represent no-fault automobile insurance consumers if the Superintendent of Insurance holds a rate hearing. The Office's mandate is to advocate the provision of quality utility service and equitable treatment at rates that are just, reasonable, and nondiscriminatory to District ratepayers; to assist individual consumers in disputes with utility companies about billing or services; and to provide technical assistance and consumer education to the Consumer Utility Board ("CUB") and other community groups. The Office also actively participates in proceedings regarding the installation and removal of public pay telephones in the community.

### **History of the Office**

Originally established by the United States Congress in 1926, the Office was eliminated by that body in a federal Executive Branch reorganization in 1952. Community concern in 1975 about rapidly rising electric rates resulted in the reestablishment of the Office by Congress through Public Law 93-88. The Office became an independent agency of the District of Columbia government on January 2, 1975.

From <http://www.opc-dc.gov/>

## **Pepco (Potomac Electric Power Company)**

*Excerpt from Pepco's Web Site*

Reliable electric service is easy to take for granted. You flip a switch and the lights come on as another day begins. Elevators, computers, photo copiers and even the clock radio and coffee pot bear silent witness to one of our most basic and most reliable services -- electricity.

Pepco has been providing reliable electric service for more than one hundred years. Today, we work around the clock to deliver electricity to more than 700,000 homes and businesses in the District of Columbia and its Maryland suburbs. We're proud of the accolades we've earned for service, reliability and customer satisfaction.

Pepco is committed to ensuring that our customers continue to receive the highest quality service available. We look forward to meeting the future with the same enthusiasm, dedication, leadership and vision that marked the company's first one hundred years.

We place a high value on being a good corporate citizen. We conduct our business responsibly and in a manner designed to protect the health and safety of our employees, our customers, the general public and the environment. We encourage and support our employees who give their time and energy creating a brighter future for others.

*Pepco. We really are connected to you by more than power lines.*

From [http://www.PEPCO.com/about\\_frms.htm](http://www.PEPCO.com/about_frms.htm)

## Important Terms Regarding the Regulation of Monopoly

**Externality.** A cost or benefit arising from any activity which does not accrue to the person or organization carrying on the activity. External costs or diseconomies are damage to other people or the environment, for example by radiation, river or air pollution, or noise, which does not have to be paid for by those carrying on the activity. External benefits or economies are effects of an activity which are pleasant or profitable for other people who cannot be charged for them, for example fertilization of fruit trees by bees, or the public's enjoyment of private buildings or gardens. Externalities may be technological or pecuniary. Technological externalities affect other people in non-market ways, for example by polluting their water supply; they create a prima facie case for intervention in the interests of efficiency. Pecuniary externalities mean that other people are affected through the market; for example a new industry may raise labour costs for other employers, or reduce the value of their capital by capturing their customers. Pecuniary externalities do not create any prima facie case for intervention, except possibly on the grounds of income distribution.

**Internalizing externalities.** Methods of getting those producing external costs or benefits to take account of them in their decision-taking. This is partly a question of information: once individuals or firms realize that their actions are causing external costs or benefits, conscience, business ethics, or a concern for their reputation may induce them to avoid or reduce activities causing external costs, and to increase activities conferring external benefits. Internalizing externalities also involves motivation, however. There is a disincentive to causing external damage if one is made to pay for it, by taxes on activities causing external damage; or an obligation to compensate the victims. Alternatively, prohibitions or quantitative restrictions of activities involving adverse externalities gives those causing them an incentive to avoid fines or jail for breaching such rules. Where damage is highly concentrated, a merger of firms may internalize the damage, since what were formerly external effects now become costs to the firm. This method may lead to problems over monopoly, and is not practicable where damage is widely diffused.

**Regulatory capture.** The tendency of regulators to identify with the interest of the industry they are supposed to regulate. This occurs when a public authority charged with regulating an industry in the public interest comes to identify the public interest with the interest of producers in the industry, rather than the interests of its customers, or the general public where externalities are involved.

—*Oxford Dictionary of Economics*, John Black, ed., second edition, Oxford University Press, Oxford and New York, 2002, pp. 167, 244-245, and 397.

**Note:** In the tree issue, the “external economies” (i.e., public benefits) of urban trees are listed in the preamble to the Urban Forest Preservation act. The “external diseconomies” are the corresponding costs resulting from Pepco's removal or “topping” of healthy trees and failure to replace them. These are mostly “technological” externalities, which in the above language “create a prima facie case for [regulatory] intervention in the interests of efficiency.”

## Pending regulations to implement the Urban Forest Preservation Act of 2002

### UFPA: Chapter 37 SPECIAL TREES

#### **3700 SPECIAL TREE REMOVAL PERMIT**

- 3700.1 No person or non-governmental entity shall remove a Special Tree, other than a Hazardous Tree, without a Special Tree Removal Permit issued by the Urban Forestry Administration, as provided in the Urban Forest Preservation Act of 2002, effective June 12, 2003 (D.C. Law 14-309; D.C. Official Code 8-6501.01 *et seq.*) (“the act”).
- 3700.2 Any person removing a Hazardous Tree without a Special Tree Removal Permit shall submit to the Urban Forestry Administration, within 15 business days after removal, a certification by an International Society of Arboriculture certified arborist that the tree was a Hazardous Tree.

#### **3701 PERMIT APPLICATION PROCEDURES FOR REMOVAL OF SPECIAL TREES**

- 3701.1 A permit application shall be signed by the property owner or representative of the property owner, and submitted on the form provided by the Urban Forestry Administration. The application must be submitted at least fifteen (15) business days prior to the day tree removal is desired.
- 3701.2 As part of the application, the applicant must agree to permit an Arborist from the Urban Forestry Administration to inspect the site of the proposed removal. The inspection shall occur during the Administration’s normal business hours and prior to permit issuance.
- 3701.3 If an International Society of Arboriculture certified arborist or an Urban Forestry Administration arborist determines that the tree to be removed is a Hazardous Tree or is a species that has been identified under § 3701.6 as appropriate for removal, a Special Tree Removal Permit shall be issued.
- 3701.4 If the applicant elects to have the species or Hazardous Tree determination made by an Urban Forestry Administration arborist and the UFA arborist fails to make a determination within forty (40) days after the application is accepted, the tree will be deemed Hazardous or otherwise appropriate for removal.
- 3701.5 If an International Society of Arboriculture certified arborist or an Urban Forestry Administration arborist determines (or is deemed to have determined) that the tree to be removed is not a Hazardous Tree and is not a species identified under § 3701.7 as appropriate for removal, or if the applicant stipulates as to both on the permit application, no Special Tree Removal Permit may be issued until the Applicant:
- (a) Pays into the Tree Fund a tree replacement fee equivalent to thirty-five dollars (\$35) per inch of circumference of each special tree that is to be removed;
  - (b) Avers on its Special Tree removal application to plant, on the same lot and in accordance with § 3702, a quantity of saplings whose aggregated circumference equals or exceeds the circumference of the Special Tree(s) to be removed; or
  - (c) A combination of a) and b) so as to account for the circumference of the tree(s) removed.

- 3701.6 The Special Tree Removal Permit shall be valid for one hundred eighty (180) calendar days after its issuance.
- 3701.7 Tree species appropriate for removal are:  
(a) *Ailanthus altissima* (common name-Ailanthus);  
(b) *Morus* species (common name-Mulberry); and  
(c) *Acer platanoides* (common name-Norway maple).

### **3702 PERMIT CONDITIONS FOR TREE REPLACEMENT**

- 3702.1 A Special Tree Removal Permit issued to a Permittee electing to plant replacement trees pursuant to § 3701.4 (b) shall contain the following conditions:
- (a) Replacement trees shall, when planted, have a minimum caliper size of two (2) inches;
  - (b) The replacement trees shall be properly planted according to ISA standards;
  - (c) The replacement trees shall be planted only during the planting season (October 15 to May 1), except that planting must be completed no later than seven (7) months after tree removal, unless construction activity makes tree replacement infeasible, in which case planting shall be completed no later than seven (7) months after construction is finished;
  - (d) Replacement trees shall not be of a species listed in § 3701.7.
  - (e) For a twelve month period after planting, the permittee shall water, mulch, and, when appropriate, remove from the tree any tree protection stakes and guy wires;
  - (f) Not later than thirty (30) days after the replacement trees are planted, the permittee shall mail or hand deliver to the Urban Forestry Administration a certification, signed by the applicant, attesting to the successful planting of the replacement trees; and
  - (g) The permittee shall grant an inspector of the Urban Forestry Administration reasonable access to the property that is the subject of the Special Tree Removal Permit for twelve months after planting.

### **3703 ENFORCEMENT AND ADJUDICATION**

- 3703.1 Notices of Infractions for violations of the act, this chapter, or any condition of a Special Tree Removal Permit shall be issued, answered and adjudicated pursuant to the Department of Consumer and Regulatory Affairs Civil Infraction Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.06 *et seq.*) and the provisions of Chapter 31 of Title 16 of the District of Columbia Municipal Regulations.
- 3703.2 Where this chapter conflicts with other laws, the more restrictive shall apply with the exception of removal of a Hazardous Tree.

### **3704 SCHEDULE OF FINES**

3704.1 Any person who violates any provision of the act, this chapter, or any condition of a Special Tree Removal Permit shall be subject to a civil infraction fine of \$100 per inch of circumference of the tree or trees in question.

### 3705 PUBLIC UTILITIES

3705.1 Public utility companies regulated by the Public Service Commission may remove Special Trees in connection with utility construction, line maintenance, and emergency work within the District's right-of-way without a Special Tree Removal Permit. Such companies shall comply with the notice requirement set forth in section 105 (b) of the act, D.C. Official Code § 6-651-05 (b) and shall comply with ANSI(a)(300) standards.

### 3799 DEFINITIONS

3799.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed below:

**Caliper** – the diameter (width) of the trunk of a tree when measured at a height of six inches above the ground/soil.

**Circumference** – the linear distance around the trunk of a tree when measured at a height of 4 ½ feet above the ground.

**District's right-of-way** – all the publicly owned property between the property line on a street, park, or other public property as such property lines are shown on the records of the District, and includes any roadway, tree space, sidewalk, or parking between such property lines.

**Hazardous Tree** – a special tree that should be removed because it is:

- (a) Structurally defective, diseased, dying, or dead;
- (b) Posing a high risk of failure or fracture with the potential to cause injury to people or damage to property: or
- (c) Causing damage to property or structures that cannot be mitigated in any manner other than removal of the tree.

**ISA Certified Arborist** - an arborist certified by the International Society of Arboriculture.

**Person or non-governmental entity** - any individual, corporation, firm, agency, association, organization, or utility company.

**Remove**- cutting down, topping, girdling, breaking, or destroying a Special Tree.

**Special Tree** – a tree within the District of Columbia that has a minimum circumference of 55 inches at 4 ½ feet above the ground.

**Tree Fund** – the fund established under section 107 of the Urban Forest Preservation Act of 2002, effective June 12, 2003 (D.C. Law 14-309; D.C. Official Code 8-6501.07).

<b>Fate of 13 "Test-Case" Trees Targeted for Removal by Pepco (Barnaby Woods, Sept. 2004)</b>						
<b>Address</b>	<b>Pepco/DDOT Initial rec.</b>	<b>October 2 visual inspection</b>	<b>Tree radar unit (TRU): readings relative to 33% critical threshold (5 November)</b>	<b>DDOT second recommendation</b>	<b>Arborist w/ resistograph (5 November)</b>	<b>BWTF rec.</b>
1. 6693 Barnaby	<b>Remove</b>	<i>Arborists and residents agree on removal.</i>	N/A	<b>Remove</b>	<b>Remove</b>	<b>Remove</b>
2. 6609 Barnaby	<b>Remove</b>	Removed before September 21 <sup>st</sup> without testing (apparently solid trunk)				
3. 6501 Barnaby	<b>Remove</b>		All scans above 33%	<b>Prune section above 20' ft elevation</b>	<b>Prune for weight reduction</b>	<b>Prune</b>
4. 6451 Barnaby	<b>Remove</b>		Too small to scan	Prune	<b>Prune</b>	<b>Prune</b>
5. 6435 Barnaby	<b>Remove</b>		25-foot scan below 33%, others not done due to safety concerns	<b>Remove</b> (threshold raised)	<b>Prune for weight reduction</b>	<b>Under review</b>
6. 6423 Barnaby	<b>Remove</b>		All scans above 33%	<b>Remove</b> (threshold raised)	<b>Prune w/ support cable</b>	<b>Prune</b>
7. 6419 Barnaby	<b>Remove</b>		50-foot scan below, others above 33%	<b>Prune</b>	<b>Remove</b> (root rot)	<b>Remove</b>
8. 6331 Utah @ Barnaby	<b>Remove</b>	Removed before September 21 <sup>st</sup> without testing (apparently solid trunk)				
9. 6330 Utah	<b>Remove</b>	Removed before September 21 <sup>st</sup> without testing (apparently solid trunk)				
10. Utah & Tennyson	<b>Remove</b>		All scans above 33%.	<b>Cut above 30' ft</b>	<b>Prune</b>	<b>Prune</b>
11. Utah @ 32d St.	<b>Remove</b>	<i>Arborists and residents agree on removal.</i>	N/A	<b>Remove</b>	<b>Remove</b>	<b>Remove</b>
12. 6210 Utah	<b>Remove</b>		3-foot scan below, others above 33%.	<b>Remove</b>	<b>Keep</b>	<b>Under review</b>
13. 3209 Tennyson	<b>Remove</b>	<i>Arborists and residents agree on removal.</i>	N/A	<b>Remove</b>	<b>Remove</b>	<b>Remove</b>
<b>Remove/total:</b>	<b>13/13</b>	<b>3/10</b>	N/A	<b>6/10</b>	<b>4/10</b>	<b>4/10</b>

Barnaby Woods Tree Task Force, 10 December 2004

## **ANSI A300 Pruning Standards Relevant to Pepco's Treatment of Trees In the Barnaby Woods NW and Rhode Island Avenue NE Neighborhoods**

*[Excerpts taken from ANSI A300 (Part 1)-2001 For Tree Care Operations, Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices (Pruning)]*

Relevant definitions:

**4.26 topping:** *The reduction of a tree's size using heading cuts that shorten limbs or branches back to a predetermined crown limit. Topping is not an acceptable pruning practice (5.5.7)*

**4.27 lion's tailing:** *The removal of an excessive number of inner, lateral branches from parent branches. Lion's tailing is not an acceptable pruning practice.*

**4.28 parent branch or stem:** *A tree trunk, limb, or prominent branch from which shoots or stems grow.*

Other relevant sections:

- 5.5.7 Topping and lion's tailing shall be considered unacceptable pruning practices for trees.
- 5.9.2.1.1.1 A pruning cut that removes a branch at its point of origin shall be made close to the trunk or parent limb, without cutting into the branch bark ridge or collar, or leaving a stub.
- 5.5.1 Pruning objectives shall be established prior to beginning any pruning operation.
- 5.5.2 To obtain the defined objective, the growth cycles and structure of individual species and the type of pruning to be performed should be considered.
- 5.9.2.1.3.1.1 Trees growing next to, and into or toward facility/utility spaces should be removed or pruned. Such pruning should be done by removing entire branches or by removing branches that have laterals growing into (or once pruned, will grow into) the facility/utility space.
- 5.9.2.1.2.1.1 A minimum number of pruning cuts should be made to accomplish the purpose of facility/utility pruning. The natural structure of the tree should be considered.
- 5.9.1.2 Only a qualified line-clearance arborist or line clearance arborist-trainee shall be assigned to line clearance work in accordance with ANSI Z133.1, 29 CFR 1910.331 – 335, 29 CFR1910.268 or 29 CFR 1910.269.

## **Example: City of Boston Tree Management Information**

The Parks Department is the agency with regulatory and operational responsibilities for public shade trees. The Department's maintenance program includes pruning, disease control, removals, and storm damage repairs.

Trees are typically removed if they are dead, diseased or pose a hazard. Massachusetts General Law, Chapter 87, Shade Trees protects public trees. The removal of a healthy public shade tree requires a public hearing.

<http://www.mass.gov/legis/laws/mgl/gl-87-toc.htm>

### **CHAPTER 87. SHADE TREES**

#### **Chapter 87: Section 1 Public shade trees; definition**

Section 1. All trees within a public way or on the boundaries thereof including trees planted in accordance with the provisions of section 7 shall be public shade trees; and when it appears in any proceeding in which the ownership of or rights in a tree are material to the issue, that, from length of time or otherwise, the boundaries of the highway cannot be made certain by records or monuments, and that for that reason it is doubtful whether the tree is within the highway, it shall be taken to be within the highway and to be public property until the contrary is shown.

#### **Chapter 87: Section 2 Powers of tree wardens**

Section 2. The tree warden of a town may appoint and remove deputy tree wardens. He and they shall receive such compensation as the town determines or, in default thereof, as the selectmen allow. He shall have the care and control of all public shade trees, shrubs and growths in the town, except those within a state highway, and those in public parks or open places under the jurisdiction of the park commissioners, and shall have care and control of the latter, if so requested in writing by the park commissioners, and shall enforce all the provisions of law for the preservation of such trees, shrubs and growths. He shall expend all money appropriated for the setting out and maintenance of such trees, shrubs and growths, and no tree shall be planted within a public way without the approval of the tree warden, and in towns until a location therefore has been obtained from the selectmen or road commissioners. He may make regulations for the care and preservation of public shade trees and establish fines and forfeitures of not more than twenty dollars in any one case for violation thereof; which, when posted in one or more public places, and, in towns, when approved by the selectmen, shall have the effect of town by-laws.

#### **Chapter 87: Section 3 Cutting of public shade trees; public hearing; damages to fee owner**

Section 3. Except as provided by section five, public shade trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the tree warden or his deputy, even if he be the owner of the fee in the land on which such tree is situated, except upon a permit in writing from said tree warden, nor shall they be cut down or removed by the tree warden or his deputy or other person without a public hearing and said tree warden or his deputy shall cause a notice of the time and place of such hearing thereof, which shall identify the size, type and location of the shade tree or trees to be cut down or removed, to be posted in two or more public places in the town and upon the tree at least seven days before such hearing and published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than seven days before the day of the hearing or if no such local newspaper exists then in accordance with the provisions of section six of chapter four; provided, however, that when a public hearing must be held under the provisions of this section and under section fifteen C of chapter forty prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the tree warden and the planning board, or if there is no planning board, the selectmen of a town or the city council of a city, and notice of such consolidated public hearing shall be given by the tree warden or his deputy as provided herein. Any person injured in his property by the action of the

officers in charge of the public shade trees as to the trimming, cutting, removal or retention of any such tree, or as to the amount awarded to him for the same, may recover the damages, if any, which he has sustained, from the town under chapter seventy-nine.

#### **Chapter 87: Section 4 Cutting down or removing public shade trees; approval of selectmen or mayor**

Section 4. Tree wardens shall not cut down or remove or grant a permit for the cutting down or removal of a public shade tree if, at or before a public hearing as provided in the preceding section, objection in writing is made by one or more persons, unless such cutting or removal or permit to cut or remove is approved by the selectmen or by the mayor.

#### **Massachusetts Tree Wardens' & Foresters' Association**

Welcome to the Massachusetts Tree Wardens' & Foresters' Association. The MTWFA was formed in 1913 to provide a forum for professional tree managers to share their concerns for a common cause ... the shade trees growing in our communities.

Today, the Association serves as an organization committed to the protection of our urban and community forests. Membership is open to tree wardens and foresters as well as advocates of tree preservation at many levels.

The Association provides an informed and unified vision for the preservation, protection and enhancement of our urban forests. Included in this vision is the advocacy of properly trained professional municipal tree wardens and foresters, the allocation of adequate fiscal resources necessary to properly manage the urban forests and the development of partnerships at all levels to ensure a healthy environment.

<http://www.masstreewardens.org/>

#### **City of Boston, Parks Department**

The Parks Department is the agency with regulatory and operational responsibilities for public shade trees. Being the lead agency for citywide policy as well as maintenance and planting provides an effective framework to manage tree planting on public property, and to augment tree maintenance, planting, public education, and programming. Tree policy issues can be generally sorted into the following three categories:

- Statutory Responsibility and Regulations
- Planting, Inventory, and Maintenance
- Community Involvement and Programming

#### **Statutory Responsibility and Regulations**

The Parks Commissioner is by statute (Chapter 87, Massachusetts General Laws) the Tree Warden of the city. Together with the Superintendent of Trees, the Commissioner is responsible for establishing a work plan for trees within the statutes and regulations that have already been established. The current draft of the comprehensive Shade Tree Policy brings all regulations, technical specifications, operations, and programs together for review and adoption by the Parks Commission. By virtue of its mandate to maintain public shade trees, it is essential that the Parks Department be involved in all decision-making regarding planting of trees on public land by city agencies.

During the past nine years, the Parks Department has undergone significant changes in its statutory responsibilities. In particular, tree management has been consolidated under the Department, which reviews and recommends changes to infrastructure plans that affect public trees. The Department has worked most closely with the Public Works Department in this respect. The most common issue

on which both departments cooperate is sidewalk reconstruction. The mandates of both departments – healthy trees and safe sidewalks – are ensured through a process of notification and review. Both departments also work together on “amendments to private property” that impact public trees. Both the Parks Department and the Public Works Department must approve any activity undertaken by a private individual or entity that requires the removal of a public tree. That private individual or entity must replace the tree or trees on a per-caliper-inch basis in a location and per specifications approved by the Parks Department.

### ***Maintenance***

**Maintenance** is particularly critical in the first years after a tree is planted. Planting specifications include provisions for watering and tree replacement in the event that the tree does not thrive.

The Maintenance Division’s Urban Forestry Unit is responsible for the pruning and removal of all trees under the jurisdiction of the Parks Department. In addition they supervise specialized treatments for disease such as Dutch Elm Disease and respond to such emergencies as snowstorms and hurricanes. The Department will typically prune over 2000 trees, remove nearly 400 trees, and answer over 500 emergency tree calls annually. In recent years the Urban Forestry Unit has initiated a more systematic approach to tree maintenance. Each year the Department prunes on a street by street basis, allowing it to better utilize funding and more effectively manage the urban forest. This more systematic approach has reduced the backlog of street tree maintenance requests and reduced the number of tree emergencies.

**<http://www.cityofboston.gov/parks/pdfs/os4d.pdf>**

**Copies of BTTF Testimony Submitted to Committee on Public Works and the Environment**  
**"Urban Forest Preservation Rulemaking Approval Resolution of 2004," PR 15-1167, December 9, 2004**

Testimony Presented by BTTF Members Deborah Redmond and John Mueller

**Deborah Redmond's Testimony**

Presented to the Councilmember Carol Schwartz  
By Deborah L. Redmond, ANC 3/4 G-01 Commissioner

Thank you, Councilmember Schwartz, and fellow Committee members.

My name is Deborah Redmond and I live on Aberfoyle Place, NW. I am the ANC Commissioner for Single Member District 3/4 G 01. I am here today representing both the Barnaby Tree Task Force and my SMD.

The Barnaby Tree Task Force is comprised of neighbors from Barnaby Woods. We do not represent any extremes -- clear cutters who value power over the environment, nor tree huggers who will sleep in the trees to prevent them from being cut down. We are citizens who want their electricity delivered reliably and safely, and who want to live in a community that values both the aesthetic and environmental benefits provided by trees.

The Task Force was set up following a meeting on September 28<sup>th</sup>, in which our community expressed its outrage at what we believed was PEPCO'S intent to clear cut healthy majestic trees along our streets. Since then, we have been working with DDOT, UFA, PSC and PEPCO to better understand what went wrong in our neighborhood and to help prevent it from happening to in other neighborhoods throughout the City. A product of our work will be a report and recommendations that we will submit to ANC 3/4 G on Monday, December 13<sup>th</sup>.

We have learned since embarking on this path that others in our City -- that is our City of Trees -- share our concerns, as evidenced by the OPC complaint filed with the PSC on behalf of Leroy Hall and Ward 5 citizens in late October.

In the few minutes that I have, I want to bring to the Council's attention what the PEPCO exemption in the Urban Forest Preservation Act translated into in our neighborhood this past September and how we need to have a better "check and balance" system in place.

As we have been able to piece together the story of what occurred in Barnaby Woods, the short version of what happened is this...

PEPCO informed the UFA that 13 trees on Barnaby, Utah and Tennyson had to be cut down in order for PEPCO to continue its line-hardening program...essentially a program to minimize outages on power feeder lines.

A visual inspection of the trees was jointly conducted by PEPCO and an UFA representative, and the trees were marked for trimming, pruning or removal.

UFA told PEPCO to inform the neighbors of its intentions. Some neighbors received paper notices at their doors from PEPCO, some did not. But, most importantly, the notices did not mention tree removal, only trimming. The neighbors thought their trees were going to be trimmed or pruned.

On September 20<sup>th</sup>, three (3) of these 13 trees were cut down.

On September 21<sup>st</sup>, neighbors realized that trees that had stood for more than 50 years along their streets -- surviving even Isabel in 2003 -- were about to be cut down. Neighbors called everyone

and anyone who would listen including Councilmember Adrian Fenty, who in turn, called DDOT asking them to tell PEPCO to stop the cutting. The work stopped.

Following the community meeting on September 28<sup>th</sup>, a tree tour was conducted on October 2<sup>nd</sup>. Arborists from PEPCO and UFA, along with an independent arborist Casey Trees Foundation had recommended, examined the trees together as neighbors followed along. Of the 10 trees still standing from PEPCO's original list, only 3 were conclusively agreed to by all arborists to be diseased and/or dead and, therefore, truly hazardous. Regarding the remaining 7 trees, there were different interpretations of their health and potential hazard.

This is when Mr. Ainsley Caldwell with UFA decided to use this opportunity to test a new x-ray machine the City had recently acquired. On November 5<sup>th</sup>, accompanied by the independent arborist, who tested the trees using a resistograph, the new x-ray machine was used on the remaining 7 trees.

Mr. Caldwell, empowered with additional information, changed the fate of 4 of the 7 trees still in question. The other 3 trees are still being reviewed as of today. We appreciate Mr. Caldwell willingness to take a closer look at our trees. Because he did so, at least 4 of the 10 trees PEPCO had targeted will live. And we are hopeful that the other remaining 3 trees may enjoy a similar fate.

But what about the rest of the trees in our City. If PEPCO got it wrong with at least 40 %, and possibly 70 % of our trees, how can we be certain that the next group of trees they recommend will be truly hazardous and a threat to our safety, rather than the cheapest way to keep the lights on? Shouldn't cutting down healthy trees be the last option, especially in keeping with the spirit of the UFPA Law that is intended to help preserve and protect our trees? That is why this exemption is a problem.

We need to restore the trust of our citizens in this process. The next time PEPCO pulls up and tells us a tree must be cut down, we need to feel confident that the City officials who are the custodians of our trees in our public space believe there is absolutely no other choice for that tree. Otherwise, we may find some of our citizens sleeping in trees. Fixing the exemption will help restore that trust.

In conclusion, this is not just a POWER vs. TREES issue relegated to one small neighborhood. It is a COMMUNITY VALUES issue that impacts our entire CITY.

Thank you, Councilmember Schwartz, and your fellow Committee members for caring about this issue and for your consideration.

John Mueller's Testimony

Public Roundtable on PR-15-1167,  
"The Urban Forest Preservation Rulemaking Approval Resolution of 2004,"  
Washington, D.C.  
Thursday, December 9, 2004  
By John D. Mueller  
President and Chief Economist, LBMC LLC

My name is John Mueller. I live at 6415 Barnaby Street, NW. In real life I am a financial market economist and I've been fascinated with the Pepco tree controversy ever since Pepco's trucks rolled onto my next-door neighbors' front lawn. It's like an economics textbook on unregulated monopoly, come to life.

Pepco is a monopoly, and having no competitors really does change a business: it affects everything from the way its employees treat (actual and potential) customers, to how it allocates its budget between paying to trim trees regularly or hiring lobbyists to expand the company's monopoly privileges.

The Urban Forest Preservation Act is basically a good law. But the Barnaby Woods Tree Task Force has found that the whole controversy over Pepco's tree removals and pruning, not only in Barnaby Woods in Ward 4, but also on Rhode Island Avenue in Ward 5 and elsewhere, is the direct result of two major gaps in the law. First, Pepco is exempt from almost all provisions in the Act, thus making it an *unregulated* monopoly. Second, there is no requirement that anyone actually notify homeowners before trees near them are removed or "topped" (drastically pruned so as to destroy them).

I worked for 10 years in Congress, and I suspect that the Pepco exemption was the price of getting the law enacted. But recent experience throughout the city has demonstrated that Pepco has abused these exemptions, first by neglecting trees for decades, second trying to remove healthy but neglected trees (in both cases because it's cheaper), and third by failing to notify homeowners—in our case, disobeying direct instructions from Urban Forestry Administration officials to do so.

So as you consider these regulations to implement the law, keep in mind that Pepco is exempt from almost every one: obtaining a Special Tree removal permit; providing advance notice before tree removal; paying \$35 per inch of tree circumference into a fund to plant new trees, and fines of \$100 per inch of tree circumference for violating these provisions.

I measured the two large trees in my back yard last night, and found that I would be fined about \$13,000 for removing them. Well, as ANC Commissioner Deborah Redmond told you, about half the 13 trees of which we made test cases turned out to be healthy or saveable, but conflict with wires after being neglected by Pepco and the city for decades. Conservatively estimated, this means Pepco has avoided over \$40,000 in fines on these trees alone, as well as about \$15,000 in providing for their replacement.

In response to an Oct. 29th complaint filed on behalf of Leroy Hall and other Ward 5 residents by the Office of the People's Counsel, a kind of ombudsman for utility consumers, the Public Service Commission established a permanent city-wide tree task force under Deputy Mayor Herbert Tillery. This group, and the Department of Transportation's improved policies about tree testing and notification are both positive steps. But they are not sufficient to prevent such a problem from recurring without closing the Pepco loophole, which is literally large enough to drive several tree removal trucks through.

We believe that accountability can be restored with two simple amendments to the Act. The first would change the default position from a blanket exemption for Pepco from the Urban Forest Preservation Act, to the presumption that Pepco must abide by the Act unless the Public Service Commission grants specific waivers. The second amendment would require advance notification to any property owner within 150 feet of major tree work, including removal.

The amendments would restore accountability to all parties concerned. DDOT's Urban Forestry Administration would have the authority it now lacks to enforce its regulations against Pepco. Pepco would be accountable to the Public Service Commission, instead of to nobody. The

Public Service Commission would be held accountable to shoulder its legal responsibility to regulate the quality as well as the price of Pepco's services. The commissioners would be accountable to the Mayor and Council, who appoint them; and the Mayor and Council, as we saw again last month, are accountable to the voters.

The proposed amendments are attached.

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Discussion draft of a proposed amendment to the Urban Forest Preservation Act of 2002.

*Purpose:* To increase the clarity, consistency, and accountability of the District of Columbia's tree policies, while promoting the provision of safe, reliable and quality services by the District's public utilities.

*Background:* The Urban Forest Preservation Act of 2002 ("UFPA," DC Act 14-614, effective 12 June 2003):

1. listed as "findings" the many benefits of the urban forest "growing on both public and private land" (heat mitigation, better air and water quality, quieter and more beautiful neighborhoods, aesthetic value, higher property values and quality of life) [Sec. 101];
2. established an Urban Forest Preservation Program under the District Department of Transportation, to promulgate regulations for the protection of trees, [Sec. 103];
3. However, it stipulated that "the regulations shall allow public utility companies regulated by the Public Service Commission to conduct utility construction, line maintenance, and emergency work within the District's rights-of-way without a Special Tree removal permit otherwise required by this title";
4. prohibited removal or "topping" (pruning likely to result in death of the tree) of "Special Trees" (those with a circumference of 55 inches or more; except "hazardous trees," which must be removed) [Sec. 104];
5. required a Special Tree removal permit from the Mayor, and provision for replacement of the tree removed;
6. required the Director of the DDOT to give not less than 15 days written notice to the local ANC commissioner before removal of any Special Tree on public space (except for hazardous trees) [Sec. 105];
7. required public utility companies to provide not less than 20 days written notice to the Director prior to any tree work on public space, "except for permitted utility construction or emergency work conducted by a public utility company regulated by the Public Service Commission" [Sec. 105]; and
8. concluded that failure to comply "shall constitute a violation subject to a fine of not less than \$100 per each inch of the circumference of the Special Tree in question."

*Discussion:* The UFPA created a well-thought-out tree policy on the whole, but exempted public utilities regulated by the PSC (chiefly Pepco) from the requirements to obtain a Special Tree removal permit and to notify the public before tree removal. PEPCO, having a 100% monopoly on the distribution of power and being protected by law from competition, cannot lose dissatisfied customers to more customer-friendly competitors; its default position is therefore to ignore the UFPA unless the PSC declares otherwise (which the PSC has not yet done). Legal authority over PEPCO clearly lies with the PSC, its statutory regulator. But the Act gave the PSC no guidance as to what tree regulations shall apply in lieu of the UFPA. (The PSC's recent orders to Pepco erroneously state that legal authority over trees on public space rests with the Department of Public Works, whose authority was transferred to DDOT in 2002.) Because of the exemption for utilities, DDOT appears to have no legal authority to enforce any tree regulations against PEPCO (including DDOT's new 3 November 2004, directives requiring notification by Pepco and the UFA to affected ANCs before tree removal). This is how the recent controversy over tree pruning and removal—

which centered on PEPCO's removal or "topping" of apparently healthy Special Trees and its failure to notify affected homeowners before doing so—came about, despite provisions about both in the UFPA.

*Suggested language:*

- a. in the quotation in (3) above [Sec. 103(a)(2)], add: "if a waiver has been granted by the Public Service Commission, signed by one or more of the commissioners and stating the reason"; and
- b. in (7) above [Sec. 105(b)], add "if a waiver has been granted by the Public Service Commission, signed by one or more of the commissioners and stating the reason."

*Conclusion:* The amendment would fulfill the apparent intent of the Act's exemption of public utilities—that the Act not hinder utilities from providing safe, reliable and quality services—but would keep basic District tree policy, legal authority and public accountability clear. The amendment would increase accountability of PEPCO officials and the PSC to follow District tree policy, by making the default position compliance with the Urban Forest Preservation Act unless the PSC issues a waiver, instead of the current situation, which is PEPCO's presumed exemption unless the PSC instructs it to the contrary. DDOT regulations implementing the legislation would be based firmly on the law and enforceable by its sanctions. Since the regulations that the City Council is now being asked to approve do not address this fundamental problem, the law needs to be amended and the regulations rewritten accordingly.

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Proposed Amendment to the Urban Forest Preservation Act  
Requiring notification of Property-Owners

No utility operating pursuant to a franchise of the District of Columbia, nor any agency of the District of Columbia, shall:

(a) remove or authorize the removal of a Special Tree, as defined in the Urban Forest Preservation Act of 2002 [D.C. Code Cite], if within the right-of-way of a public street, or

(b) cut or authorize cutting of such a tree to such an extent as to endanger its survival,

unless it has provided at least 30 days advance written notice to the owners of all properties located within 150 feet of the tree, accompanied by (i) a description of the action planned, and (ii) information as to how the property owner can obtain a copy of any report obtained by the utility or governmental agency from a licensed arborist that supports the planned action;

provided, however, that the 30-day notice requirement shall not apply if:

(a) the tree has been certified in writing by a licensed arborist to be so damaged or diseased as to constitute an imminent danger to persons or property, and such written certification is made available upon request to any property owner who would otherwise be entitled to advance notice, or

(b) there has been written consent to the planned tree removal or cutting by all property owners entitled to notice.

[Drafted by S. White Rhyme and submitted to the Barnaby Woods Tree Task Force, 28 November 2004]

## **Barnaby Tree Task Force: Final Report**

### **Copies of Press Clippings**

1. ["Neighbors Silence Pepco's Chain Saws: Tree Trimming Decried as Too Aggressive,"](#) by Monte Reel, Washington Post District Weekly, September 30, 2004, p. 3.
2. ["Barnaby Woods tree-cutting stirs power talk,"](#) by Ian Thoms, Northwest Current, October 6, 2004, p. 1
3. ["Must Trees Bear Burden for Pepco?"](#) by Marc Fisher, Washington Post Metro column, October 7, 2004.
4. ["Withstanding Storms,"](#) by William J. Sim, Washington Post, October 21, 2004.
5. ["Barnaby Woods trees test will result in power outage,"](#) Ian Thoms, Northwest Current, November 3, 2004, p. 11.
6. ["Task force faults city, Pepco on tree work,"](#) Northwest Current, November 10, 2004, p. 7.
7. ["Protecting the District's Trees-and Its Power System,"](#) Elizabeth Noel, letter to the editor, Washington Post, November 10, 2004.
8. "Arborist Accurately Admonishes Pepco," by Jonathan Strong, letter to the editor, Northwest Current, November 10, 2004, p. 12.
9. ["New Device May Save Trees Near Power Lines,"](#) Washington Post District Weekly, November 11, 2004
10. ["Fallen trees were healthy, Chevy Chase group says,"](#) Northwest Current, December 15, 2004, p. 3