

name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 25, 1996, as supplemented by letter dated August 23, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 27th day of August 1996.

For the Nuclear Regulatory Commission.  
Joseph W. Shea,  
*Project Manager, Project Directorate I-2  
Division of Reactor Projects—I/II, Office of  
Nuclear Reactor Regulation.*  
[FR Doc. 96-22343 Filed 8-29-96; 8:45 am]  
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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-26558]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 23, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available

for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 16, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

EUA Cogenex Corporation, et al. (70-8879)

EUA Cogenex Corporation ("Cogenex") and EUA Cogenex-Canada, Inc. ("Cogenex-Canada") (collectively, "Applicants"), both of P.O. Box 2333, Boston, Massachusetts 02107, and both wholly-owned subsidiary companies of Eastern Utilities Associates, a registered holding company, have filed an application-declaration under sections 9(a), 10, 12(b) and 13 of the Act and rules 45, 54, 90 and 91 thereunder.

Applicants propose: (i) for Cogenex-Canada to form and fund a wholly owned subsidiary ("Newco") which will enter into a general partnership with Monenco Agra, Inc. ("MA"), a nonassociate Canadian business corporation, for the purpose of providing energy conservation services to industrial sector customers in Canada ("Territory"); (ii) for Newco to form and fund a general partnership with MA ("JV ESCO"); (iii) for the Applicants to guarantee third-party obligations of Newco and the JV ESCO in an aggregate amount, together with other investments in Newco, not exceeding \$15 million; and (iv) for Cogenex-Canada and its associate companies (other than an associate company which is a public utility company) to furnish goods and services to JV ESCO.

Cogenex-Canada proposes to form JV ESCO as a Canadian general partnership. Cogenex-Canada and MA will each own a 50% general partnership interest in JV ESCO and share equally in the capital contributions, allocation of profits and losses and distributions of JV ESCO. JV ESCO will be governed by a

management committee comprised of one representative of each partner. Cogenex-Canada and MA will make capital contributions in an amount initially expected to be approximately \$1,000 each, which will be used by JV ESCO for working capital purposes.<sup>1</sup> Cogenex-Canada and MA will subcontract personnel to JV ESCO at cost as needed until such time, if any, as JV ESCO employs its own personnel.

Cogenex-Canada and MA entered into a letter agreement ("Letter Agreement") dated January 11, 1996 in which they agreed to perform initial marketing, sales, auditing, bidding, job procurement and performance activities in preparation of forming JV ESCO and to develop a long-term business plan for JV ESCO. The term of the Letter Agreement is one year ("Interim Period"), unless terminated sooner by: (i) the formation of JV ESCO; (ii) the decision of one or both of Cogenex-Canada and MA; (iii) the bankruptcy or insolvency of either party; or (iv) failure to obtain the necessary corporate and regulatory approvals. Cogenex-Canada and MA will assign all contracts and business opportunities obtained during the Interim Period within the Territory at cost to JV ESCO. The Applicants and MA will also be reimbursed by JV ESCO for their expenses incurred during the Interim Period but not previously reimbursed, except for products and services provided by affiliates of the Applicants and MA, which will be reimbursed at standard market rates.

Cogenex-Canada will purchase stock from, and make capital contributions, loans and open account advances to, Newco ("Investments"). Such issuance and sale of securities, capital contributions, loans and open account advances will be exempt from the requirement of Commission authorization pursuant to rules 45 and 52. In addition, Applicants state that JV ESCO may borrow from third party lenders through loans exempt from the requirement of Commission authorization by rule 52(b). Cogenex-Canada and Cogenex propose to guarantee obligations of Newco and JV ESCO in an aggregate amount that, together with the Investments, will not exceed \$15 million.

The Applicants request that any goods or services furnished by Cogenex-Canada or any of its associate companies (other than an associate company that is a public utility company) to the JV ESCO be furnished at prices that will not exceed (i) cost to

<sup>1</sup> Applicants state that capital contributions to JV ESCO will be exempt from the requirement of Commission authorization pursuant to rule 45(b)(4).

the extent that such services are pass-through services from EUA Service Corporation, and (ii) market prices to the extent such goods and services originate from other associate companies, pursuant to an exception from the requirements of section 13(b) and rules 90 and 91 thereunder. The types of goods and services which Cogenex-Canada and its associate companies would provide to the JV ESCO would include marketing, accounting and engineering services and products used in energy conservation projects. JV ESCO will not be providing goods or services to Cogenex-Canada or its associate companies.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

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BILLING CODE 8010-01-M

[Rel. No. IC-22170; File No. 812-10118]

### **Morgan Stanley Universal Funds, Inc. et al.**

August 23, 1996.

**AGENCY:** Securities and Exchange Commission (the "SEC" or the "Commission").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

**APPLICANTS:** Morgan Stanley Universal Funds, Inc. ("MS Fund"), Morgan Stanley Asset Management Inc. ("MSAM") and Miller Anderson & Sherrerd, LLP ("MAS").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order to the extent necessary to permit shares of the MS Fund and shares of any other investment company that is designed to fund insurance products and for which MSAM and MAS, or any of their affiliates, may serve as investment adviser, administrator, manager, principal underwriter or sponsor (collectively, the "Funds") to be sold to and held by: (a) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies"); and (b) qualified pension and retirement plans outside the separate account context ("Qualified Plans").

**FILING DATE:** The application was filed on May 1, 1996.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 17, 1996, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writers interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Morgan, Lewis & Bockius LLP, Attention: Richard W. Grant, Esq. and James B. Kimmel, Esq., 2000 One Logan Square, Philadelphia, Pennsylvania 19103-1993.

**FOR FURTHER INFORMATION CONTACT:** Joyce Merrick Pickholz, Senior Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

#### **Applicant's Representations**

1. The MS Fund, an open-end, management investment company organized as a Maryland corporation, currently consists of 17 separate investment portfolios. The MS Fund may create additional portfolios in the future.

2. MSAM and MAS serve as the investment advisers to the MS Fund. They are wholly owned subsidiaries of Morgan Stanley Group, Inc. and are registered as investment advisers under the Investment Advisers Act of 1940.

3. The MS Fund intends to offer its shares to variable annuity separate accounts and variable life insurance separate accounts established by insurance companies that may or may not be affiliated with one another and to Qualified Plans.

4. The Participating Insurance Companies will establish their own separate accounts and design their own variable annuity and variable life insurance contracts ("Contracts"). The Funds will offer shares to the separate accounts and fulfill any conditions that

the Commission may impose upon granting the order requested in the application.

5. The Funds can increase their respective asset bases by selling shares to Qualified Plans. The Qualified Plans may choose a Fund as the sole investment option, or as one of several investment options, under a Plan. Participants in the Qualified Plans may or may not be given an investment choice, depending upon the Qualified Plan. Shares of a Fund sold to a Qualified Plan will be held by the trustee(s) of the Qualified Plan as mandated by Section 403(a) of the Employee Retirement Income Security Act ("ERISA"). ERISA does not require pass-through voting to be provided to participants in Qualified Plans.

#### **Applicants' Legal Analysis**

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust ("UIT"), Rule 6e-2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e-2 is available to a separate account's investment adviser, principal underwriter, and depositor. The exemptions provided under Rule 6e-2(b)(15) are available only where the management investment company underlying the UIT offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is referred to as "mixed funding." The use of a common investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to as "shared funding." The relief provided under Rule 6e-2(b)(15) is not applicable to a scheduled premium variable life insurance separate account that owns shares of an underlying fund where the underlying fund offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e-2(b)(15) does not provide exemptive relief for either mixed funding or shared funding.

2. Applicants state that with respect to Rule 6e-2, exemptive relief is also necessary if shares of the Funds are also to be sold to Qualified Plans since the relief under Rule 6e-2 is available only where shares are offered exclusively to