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[Rel. No. IC-21561; File No. 812-9588]

**American Skandia Life Assurance Corporation, et al.**

December 1, 1995.

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

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

**APPLICANTS:** American Skandia Life Assurance Corporation ("ASLAC"), American Skandia Life Assurance Corporation Variable Account B (Class 1) ("Account B—Class 1"), American Skandia Life Assurance Corporation Variable Account B (Class 2) ("Account B—Class 2"), and American Skandia Marketing, Inc. ("ASM").

**RELEVANT 1940 ACT SECTIONS:** Sections 6(c), 17(a), 17(b), 17(d) and 26(b) of the 1940 Act and Rule 17d-1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order of approval under Section 26(b) of the 1940 Act and exemptions from Sections 6(c), 17(a), 17(b), 17(d) of the 1940 Act and Rule 17d-1 thereunder. The requested order would exempt Applicants from those Sections of the 1940 Act and the Rule set out above to the extent necessary to permit certain underlying mutual funds of the separate account to be substituted for certain other underlying mutual funds.

**FILING DATE:** The application was filed on May 2, 1995 and amended on November 17, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

**ADDRESSES:** SEC, Secretary, 450 Fifth Street, NW., Washington, DC 20549. Applicants: John T. Buckley, Esq., Werner & Kennedy 1633 Broadway,

New York, New York 10019 and American Skandia Life Assurance Corporation, c/o Jeffrey M. Ulness, Esq., One Corporate Drive, Shelton, CT 06484.

**FOR FURTHER INFORMATION CONTACT:**

Edward P. Macdonald, Staff Attorney, or Brenda D. Sneed, Chief (Office of Insurance Products), Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the SEC.

**Applicants' Representations**

1. ASLAC, the depositor of both Account B—Class 1 and Account B—Class 2 (collectively, the "Separate Account"), is a stock life insurance company organized under the laws of the State of Connecticut and wholly-owned by American Skandia Investment Holding Corporation ("ASIH"), which is an indirect wholly-owned subsidiary of Skandia Insurance Company Ltd., a corporation organized under the laws of the Kingdom of Sweden.

2. ASM, the underwriter of variable annuity contracts issued through the Separate Account and offered by ASLAC, is registered with the SEC and is a member of the NASD. ASM is 100% owned by ASIH.

3. The Separate Account is a separate account of ASLAC, and is registered under the 1940 Act as a unit investment trust. ASLAC established the Separate Account to the purpose of funding certain flexible purchase payment deferred variable annuity contracts (the "Contracts"). Account B—Class 1 subaccounts each invest exclusively in one of the corresponding portfolios of six open-end management investment companies. The following five Contracts are funded, through the sub-accounts of Account B—Class 1: American Skandia Advisors Plan ("ASAP") [32];<sup>1</sup> ASAP II [21];<sup>2</sup> the LifeVest Personal Security Annuity ("PSA") [32]; the Alliance Capital Navigator Annuity ("Alliance Navigator") [15]; and the StageCoach Variable Annuity ("StageCoach") [8] (collectively, the "Class 1 Contracts").

Account B—Class 2 sub-accounts each invest exclusively in one of the corresponding portfolios of six open-end management investment companies. ASLAC currently offers two

<sup>1</sup> The numbers in brackets denote the number of portfolios which are currently available under the Contracts.

<sup>2</sup> ASAP II, the Alliance Navigator and the Stagecoach Contracts will not be subject to the proposed substitutions.

Contracts that invest in Account B—Class 2: the Wrap Fee Contracts ("Wrap Fee") [42].

4. Under the Contracts affected by the proposed substitutions, six open-end management investment companies currently offer shares of several of their portfolios to the Separate Account: The Alger American Fund ("Alger Fund"); Alliance Variable Products Series Fund, Inc. ("AVP"); Neuberger & Berman Advisers Management Trust ("AMT"); American Skandia Trust ("AST"); and Scudder Variable Life Investment Fund ("Scudder"). In addition, six portfolios of the Janus Aspen Series ("Janus") are offered to Account B—Class 2 but not Account B—Class 1. All such investment companies in which the Separate Account invest are collectively referred to as "Underlying Funds."

5. The proposed substitutions would result in a reduction in variable investment options and corresponding portfolios available as follows. ASAP and PSA would be reduced to 21 (a reduction of 11 each) and Wrap Fee would be reduced to 21 (a reduction of 21). Applicants state that funding such varied products through a consolidated fund structure will aid in the growth of the Underlying Funds resulting in lower operating costs through economies of scale. Applicants further state that regardless of whether one Contract achieves more popularity or appeal, or is no longer marketed by ASLAC, the interests of Contract owners will be protected by like underlying portfolios of all ASLAC nonproprietary variable annuities.

6. Of the Underlying Funds, only AST is affiliated with ASLAC or the Separate Account. None of the Underlying Funds, their investment managers, or underwriters are affiliated with ASLAC, the Separate Account or AST through any corporate ownership.

7. Applicants state that in the registration statements filed by the Separate Account, ASLAC expressly reserved the right both on its own behalf and on behalf of the Separate Account to eliminate sub-accounts, combine two or more sub-accounts, or substitute one or more Underlying Funds for others in which its sub-accounts are invested.

8. ASLAC, on its own behalf and on behalf of the Separate Account, proposes to effect the following substitutions of shares of the following portfolios (the "Transferee Portfolios") for shares of other portfolios (the "Transferor Portfolios") (collectively, the "Substitution(s)"): (i) the AST Phoenix Balanced Asset Portfolio will be substituted for the Alger Balanced, Alliance Total Return, AMT Balanced, Scudder Balanced, and Janus Aspen

Balanced Portfolios; (ii) The Lord Abbett Growth & Income Portfolio (AST) will be substituted for the Alger Income & Growth and Alliance Growth & Income Portfolios; (iii) the Seligman Henderson International Equity Portfolio (AST) will be substituted for the Alliance International, Scudder International, and Janus Aspen Worldwide Growth Portfolios; (iv) the Alger Growth Portfolio will be substituted for the Alliance Premier Growth, AST Phoenix Capital Growth, AST Eagle Growth Equity, Scudder Capital Growth, and the Janus Aspen Aggressive Growth Portfolios; (v) the PIMCO Limited Maturity Bond Portfolio (AST) will be substituted for the Alliance Short-Term Multi-Market, Alliance U.S. Government/High Grade Securities, AMT Limited Maturity Bond, and Janus Short-Term Bond Portfolios; (vi) the AMT Partners Portfolio will be substituted for the AMT Growth Portfolio; (vii) the PIMCO Total Return Bond Portfolio (AST) will be substituted for the Scudder Bond and Janus Aspen Flexible Income Portfolios; and, (viii) the JanCap Growth Portfolio (AST) will be substituted for the Janus Aspen Growth Portfolio. Applicants note that allocations to the Alliance Fund Transferor Portfolios available under Separate Account Contracts will be substituted, except for those amounts allocated under the Alliance Navigator Contract (Account B—Class 1). Allocations under the Alliance Navigator Contract will remain unaffected by the Substitutions.

9. The Substitution process will include two periods during which Contract owners may make cost free transfers to the remaining portfolios of their choice. The first free transfer period will start prior to the "Automatic Selection Date." The Automatic Selection Date is the date ASLAC will schedule the Substitutions to occur. Such date will be as soon as practicable following the issuance of an order by the SEC. Moreover, any transfers of account value from any of the Transferor Portfolios from May 1, 1995 (the date the relevant Contract prospectuses reflected the proposed Substitutions), will not be counted toward the twelve free transfers permitted under relevant Contracts.

10. For several months prior to the Automatic Selection Date, and in all cases since May 1, 1995, relevant Contract prospectuses reflected the Substitutions. Such registration statements as in effect as of May 1, 1995 for ASAP, PSA and Wrap Fee also contain information of the investment policies of the Transferee Portfolios.

11. The first free transfer period will start before the Automatic Selection Date. Within approximately five days after the Applicant's notice of application appearing in the Federal Register, ASLAC will mail a written notice to all Contract owners who, as of the date the notice of application appears in the Federal Register, have allocations in any Transferor Portfolio. The notice will contain information as to the Substitutions and will provide instructions regarding the ability of Contract owners to make transfers of account value out of any Transferor Portfolio without transfer fees or similar charges, and without such transfer being counted as a free transfer. After notice is mailed and up until the Automatic Selection Date, any Contract owner making an allocation or transfer (*i.e.*, new money) to any Transferor Portfolio during the first free transfer period will be sent a similar notice with their confirmation statement (the "Affected Contract owners").

12. As of the Automatic Selection Date, allocations or transfers to a Transferor Portfolio will automatically be allocated to the corresponding Transferee Portfolio. No Transferor portfolio will accept additional premium payments (*i.e.*, new money) on or after the Automatic Selection Date.

13. On the Automatic Selection Date, all account values allocated to each Transferor Portfolio, if any, will be transferred to the corresponding Transferee Portfolio ("Automatic Selection Option"). Applicants state that the Automatic Selection Options (which may only occur if Contract owners do not give timely instructions during the first free transfer period) are temporary in character because Contract owners can always exercise their own judgment as to the most appropriate alternative investment. Applicants also state that Affected Contract owners will have an additional free transfer period after the Automatic Selection Date. No sales load deductions will be made in connection with any transfers among the portfolios because of the Substitutions or otherwise. Contract owners who have not annuitized may at any time, before or after the Substitutions, transfer their account value to any of the other portfolios offered under their respective Contracts.

14. The second free transfer period will start after the Automatic Selection Date. For thirty (30) calendar days, or if the thirtieth day is not a business day then the following business day after the Automatic Selection Date, Affected Contract owners may transfer account values out of the Transferee Portfolios to any other available portfolios without

transfer fees or similar charges and without transfer being counted as a free transfer. Within five (5) days of the Automatic Selection Date, ASLAC will send Affected Contract owners written notice of the Substitution identifying units of the Transferee Portfolios. ASLAC will include in this notice information regarding the second free transfer period. Applicants state that if Affected Contract owners have telephone transfer privileges, telephone instructions will be accepted during both free transfer periods.

15. Applicants anticipate that some or all Substitutions may be effected partly for cash and partly for securities as a partial redemption "in-kind" at the net asset values of the portfolios (such transfer will be in conformity with Sections 22(c) and 22(g) of the 1940 Act and Rule 22c-1 thereunder). The transfers will be effected by selling the securities of the applicable Transferor Portfolios and applying the proceeds to the purchase price of securities issued by the Transferee Portfolios selected by Contract owners. At all times all contract values will remain unchanged, no fees or charges will be incurred, all Contract owner rights will be unaffected, and ASLAC's obligations under any Contract will not be altered in any way because of the Substitutions.

16. To the extent "in-kind" redemptions are not utilized, Applicants anticipate that Transferor Portfolios will incur brokerage fees and expenses to the extent not assumed by Applicants, or the adviser or sub-adviser of the Transferee Portfolios in connection with the redemption of shares of the affected Transferor Portfolios.

Applicants state that they will effect the redemptions "in-kind" to the extent consistent with investment objectives and applicable diversification requirements. ASLAC states that it will establish procedures to ensure that "in-kind" redemptions will be effected in a fair and equitable manner from the perspective of the Separate Account, the Transferor Portfolios, and other separate accounts which currently invest in the Transferor Portfolios, and other separate accounts which currently invest in the Transferor Portfolios. These procedures will provide that: (i) the Transferor Portfolio investment adviser identify prior to the effective date of the Substitutions the securities to be included in the "in-kind" transfer; and (ii) the investment adviser to the Transferee Portfolio reviews and agrees to accept the securities so identified as payment for the purchase of Transferee Portfolio shares. The valuation of "in-kind" transfers will be on a basis consistent with the valuation

procedures of the applicable Transferor and Transferee Portfolios.

17. ASLAC or the investment adviser of the Transferee Portfolio will assume the transfer and custodial expenses and legal and accounting fees of the Substitutions, and Contract owners will not incur any fees or charges as a result of the transfer of account value from any portfolio. The Substitutions will not increase Contract and Separate Account fees and charges after the Substitutions. In addition, Applicants state that the Substitutions have been designed to avoid any adverse federal income tax impact on Contract owners.

18. Following the Substitutions, the sub-accounts which invest in the Transferor Portfolios will be terminated.

#### Applicants' Legal Analysis

##### *Request for an Order Pursuant to Section 26(b) of the 1940 Act*

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the 1940 Act.

2. Section 26(b) protects the expectation of investors in a UIT that the UIT will accumulate shares of a particular issuer. The Section also prevents unscrutinized security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial proceeds, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords protection to investors by preventing a depositor or trustee of a unit investment trust (holding the shares of one issuer) from substituting the shares of another issuer for those shares, unless the Commission approves the Substitutions.

3. Applicants represent that the purposes, terms, and conditions of the Substitutions will not entail any of the abuses that Section 26(b) is designed to prevent for the following reasons:

a. The proposed Substitutions are for shares of the Transferee Portfolios with investment objectives of the corresponding Transferor Portfolios so as to provide a means for Contract owners to continue their current investment goals and risk expectations.

b. The proposed Automatic Selection Options will be only temporary because

Contract owners may always exercise their own judgment as to the most appropriate alternative investment vehicles. No sales load deductions will be made in connection with any transfers among the portfolios by reason of the Substitutions. After the Substitutions, the Affected Contracts would still offer a broad array of variable investment options and Contract owners who have not annuitized may at any time transfer their account value to any of the other portfolios offered under their respective Contracts.

c. the transactions effecting the proposed Substitutions including the redemption of Transferor Portfolio shares and the purchase of Transferee Portfolio shares will be effected at net asset value in conformity with Section 22(c) of the 1940 Act and Rule 22c-1 thereunder.

d. The anticipated utilization of "in-kind" redemptions by the Transferor Portfolios for the purchase by the Separate Account of Transferee Portfolio shares, in conformity with Section 22(g) of the 1940 Act, may reduce transaction costs of the Substitutions.

e. ASLAC or the Transferee Portfolio investment adviser will assume various expenses and transaction costs relating to the Substitutions, including custodial and transfer fees incurred by use of any "in kind" redemptions, and legal and accounting fees.

f. The Substitutions will not alter or affect the insurance benefits provided by ASLAC to Contract owners or the terms or obligations under the terms of the Contracts.

g. The Substitutions are designed to avoid any adverse effects upon the tax benefits available to Contract owners; the Substitutions are designed not to give rise to any current federal income tax to Contract owners.

h. The Substitutions are expected to confer economic benefits by virtue of the enhanced asset size of the Transferee Portfolios.

4. Applicants state that under the circumstances it is in the best interest of Contract owners to proceed with the Substitutions. The Substitutions are appropriate because the overall investment objectives of the Transferee Portfolios are similar and their investment objectives are compatible to the Transferor Portfolios.

5. Applicants also represent that total fees and expenses as a percentage of net assets for the Transferee Portfolios are expected to decrease through economies of scale caused by the anticipated increase in asset size and the increased similarity of available portfolios in

applicable Contracts as a result of the Substitutions.

##### *Request for Order Pursuant to Section 6(c) and 17(b) of the 1940 Act*

6. Applicants seek an exemption from Section 17(a) through both Sections 17(b) and 6(c) of the 1940 Act because Section 17(b) permits the Commission to exempt a single "proposed transaction" whereas Section 6(c) enables the Commission to exempt a series of transactions.

7. Under certain circumstances, Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any affiliated person of the persons described above from purchasing any security or other property from such registered investment company.

8. Applicants state that since the Substitutions may be deemed to involve one or more purchases or sales of securities between and among affiliated persons, the Substitutions may involve transactions prohibited by Section 17(a) of the 1940 Act. Applicants also state that the Substitutions may not be exempt from Section 17 of the 1940 Act pursuant to Rule 17a-7 thereunder, since the affiliations among some of the parties do not arise solely through having common investment advisers, common directors and/or common officers.

9. Section 17(b) authorizes the SEC to issue an order exempting a proposed transaction from Section 17(a) if evidence establishes that: (1) the proposed transaction is fair and reasonable and does not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act. Applicant represent that the terms of the Substitutions are consistent with the standard for relief described in Section 17(b) of the 1940 Act.

10. The Substitutions will be effected at the net asset value of the securities involved. ASLAC or the adviser of the Transferee Portfolios will bear those expenses associated with the transfers. The Substitutions and transfers of securities are consistent with the policies of each investment company involved and of the 1940 Act.

11. As a condition to the granting of an order of exemption under Section

17(b), Applicants represent that they will comply with the conditions set forth in Rule 17a-7 except for subparagraph (a), which requires that the transaction be "for no consideration other than cash payment." Although the consideration in some cases will be "securities" and not cash, Applicants state that these transactions are in substance the type of transactions currently exempted by Rule 17a-7.

12. Applicants further state that the terms of the Substitutions and the transfer of the securities meet all the requirements of Section 17(b) and represent that for the terms of the Substitutions and transfers of securities are reasonable and fair and do not involve overreaching on the part of any person concerned.

13. Applicants also represent that with respect to the "in-kind" portion of the Substitutions established procedures will guard against inappropriate or unfair exchanges.

14. Since Applicants may be deemed to be affiliated persons of each other or affiliated persons of an affiliated person under Section 2(a)(3) of the 1940 Act the Substitutions may be deemed to entail one or more purchases or sales of securities or property between Applicants. Accordingly, Applicants believe that the Substitutions may require an order exempting the transactions prohibited under Sections 17(a)(1) and 17(a)(2) of the 1940 Act, pursuant to Section 17(b) of the 1940 Act.

15. Rule 17a-7 under the 1940 Act exempts from the prohibitions of Section 17(a) a purchase or sale transaction between registered investment companies or separate series of registered investment companies which may be affiliated persons, or affiliated persons of affiliated persons, solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors and/or common officers, subject to certain specified conditions. As the affiliation among the Applicants, however, does not arise solely by reason of having common investment advisers, directors, and/or officers, and redemption by the Transferor Portfolios may involve redemptions of securities "in-kind" rather than for cash, the Substitutions likely would not satisfy the technical requirements of Rule 17a-7.

Nonetheless, Applicants represent that the Substitutions will comply with the underlying intent of Rule 17a-7 in all respects for the following reasons. First, although the Substitutions would involve partial redemption of securities "in-kind" rather than the "all-cash," as

required under subsection (a) of Rule 17a-7, such transactions likely would be less amenable to self-dealing than corresponding "all-cash" transactions. Moreover, redemptions in kind would reduce brokerage commissions or other remuneration ordinarily paid in connection with securities transactions. Second, because the Substitutions will be effected at the independent current market price and are consistent with the policies of each of the Transferor and the Transferee Portfolios, the Substitutions would comply with both the technical requirements and underlying intent of subsections (b) and (c) of the Rule. Third, to the extent consistent with investment objectives and applicable diversification requirements, Applicants will effect redemption "in-kind" to reduce any brokerage commissions or other remuneration usually paid in connection with securities transactions, as contemplated by subsection (d) of the Rule. Finally, because the Substitutions would occur only once, the formal written compliance procedure required under subsections (e) and (f) of the Rule would prove inapplicable.

#### *Request for Order Pursuant to Section 6(c) and Rule 17d-1 of the 1940 Act*

16. Section 17(d) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated person of such affiliated person, acting as principal, from effecting any transaction in which such registered investment company, or a company controlled by such registered investment company, is a joint participant with such person, in contravention of Commission rules designed to limit or prevent participation by the registered investment company "on a basis different from or less advantageous than" that of the affiliated person. Rule 17d-1(a) prohibits any of the persons described above, acting as principal, from participating in, or effecting "any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered investment company, or a company controlled by such registered company, is a participant" unless the Commission has approved the joint enterprise, arrangement or plan.

17. Applicants state that they may be deemed to be affiliated persons of each other under Section 2(a)(3) of the 1940 Act, and that the Substitutions will involve transactions that may be deemed to implicate Section 17(d) of the 1940 Act and Rule 17d-1 thereunder.

18. The simultaneous purchase and sale transactions involve a number of registered investment companies, and each such purchase and sale transaction is dependent on the other. Each transaction therefore may be deemed to be in connection with a joint arrangement within the contemplation of Section 17(d) of the 1940 Act and Rule 17d-1 thereunder. Applicants request an order pursuant to Section 6(c) and Rule 17d-1 to eliminate any question of compliance with Section 17(d) and Rule 17d-1.

19. Rule 17d-1 provides for the Commission to grant an order upon request. In passing upon such request, the Commission is to consider whether the participation of the management investment companies is consistent with the provisions, policies and purposes of the 1940 Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

20. Section 6(c) of the 1940 Act provides that the Commission may grant an order exempting persons and transactions from any provision or provisions of the 1940 Act as may be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. For all the reasons stated herein, Applicants submit that the Substitutions are consistent with the provisions, policies and purposes of the 1940 Act and that the participation of each of the parties to the Substitutions will be on an equal basis and consistent with their respective participation in the Substitutions, and is consistent with the provisions, policies and purposes of the 1940 Act.

21. Based on the foregoing, Applicants represent that the Substitutions and the related transactions meet all the requirements of Section 6(c) of the 1940 Act and Rule 17d-1 thereunder, and are consistent with applicable precedent, and request that an order of exemption from Section 17(d) and approval pursuant to Section 6(c) and Rule 17d-1 be granted.

#### Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,  
*Deputy Secretary.*

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[Release No. 35-26423]

**Filing Under the Public Utility Holding Company Act of 1935, as Amended ("Act")**

December 1, 1995.

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 December 26, 1995, 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.

Eastern Utilities Associates, et al. (70-7287)

Eastern Utilities Associates ("EUA"), a registered holding, and its wholly owned nonutility subsidiary company, EUA Cogenex, Corp. ("Cogenex"), both at P.O. 2333, Boston, Massachusetts 02107, have filed a post-effective amendment under sections 9(a) and 10 of the Act to their application-declaration previously filed under sections 6(a), 7, 9(a), 10, 12(c), 12(f), and 13(b) of the Act and rules 42, 45, 87, 90, and 91 thereunder.

By prior order in this proceeding dated December 19, 1986, the Commission authorized EUA to acquire

Cogenex (HCAR Release No. 24273). Subsequent orders of the Commission authorized Cogenex to engage in additional activities and removed restrictions on the amount of revenues Cogenex could receive from customers outside New England (see, e.g., HCAR Release Nos. 26232 (Feb. 15, 1995), 26135 (Sept. 30, 1994), 25982 (Jan. 28, 1994), and 25636 (Sept. 17, 1992)).<sup>1</sup>

Cogenex designs, finances, installs and maintains energy conservation systems. Cogenex provides energy management services ("EMS") directly to institutional commercial, industrial and governmental customers to reduce their energy costs and consumption. Cogenex employs energy efficiency technology and equipment in its EMS program through building automation, lighting modifications, boiler replacement, and other heat recovery methods to reduce electrical energy and fuel consumption and related energy costs of its customers. Cogenex earns fees for these services primarily through shared savings agreements under which Cogenex is paid a portion of the customers' energy savings.

Cogenex also participates in demand side management ("DSM") programs sponsored by electric utilities as a means to decrease base load and peak demand on the utilities' systems. In DSM programs, Cogenex provides EMS services to the utility's customers to reduce their energy demands. The utility pays Cogenex based on the reduction in demand, and Cogenex may also receive a portion of the customer's savings.

Cogenex now proposes to provide services relating to the furnishing and conservation of water to the types of customers to whom it furnishes EMS services. Cogenex proposes to provide such water services packaged with its EMS services or on a stand alone basis.

American Electric Power Company, Inc., et al. (70-8307)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its nonutility subsidiary company, AEP Energy Services, Inc. ("AEPES") (collectively, "Applicants"), both at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b), and 13(b) of the Act and rules 45, 54, 87, 90, and 91 thereunder.

AEPES is engaged in the business of selling management, technical and training expertise both to certain AEP

affiliates and to non-affiliates. AEPES requests authorization to make financial and/or technical contributions to assist research and development efforts of non-affiliated entities. As a result of such contributions, AEPES may receive a license to use and/or a right to sublicense intellectual property developed by those entities ("Non-Affiliate Intellectual Property"). If AEPES became entitled to receive an equity interest in a non-affiliated entity to which such contributions were made, AEPES would sell the interest to an affiliate, AEP Investments, Inc., at its fair market value, subject to the receipt of any required regulatory approvals.

AEPES is also engaged in, among other things, the business of selling or otherwise providing access to intellectual property developed by AEP affiliates for their own use. Currently, AEPES pays to any such affiliate in perpetuity a certain portion of the revenues realized from any disposition of such intellectual property. Specifically, AEPES pays the affiliate (a) 70% of the revenues from the intellectual property until the affiliate recovers its direct costs of making the property available and (b) 20% of such revenues thereafter. Additionally, AEPES makes intellectual property it develops available to AEP affiliates without charge, except for actual expenses incurred by AEPES in connection with making such intellectual property so available.

AEP and AEPES propose that, if AEPES disposes of intellectual property developed by an affiliate for its own use and which such affiliate retains a right to use, AEPES would pay that affiliate an amount equal to the costs the affiliate directly incurred in making the property available to AEPES. For dispositions by AEPES of intellectual property developed by an AEP affiliate for its own use, but which that affiliate no longer would be able to use, AEPES would continue to reimburse that affiliate an amount equal to the affiliate's development costs. If an AEP affiliate developed intellectual property not for its own use but for use by AEPES, AEPES would also pay that affiliate an amount equal to the affiliate's development costs. AEPES additionally proposes that any disposition on Non-Affiliate Intellectual Property to an AEP affiliate would be at cost. Any intellectual property developed by AEPES would be made available to AEP affiliates at the direct cost of making such property available.

Also, AEPES requests authority to provide or broker financing to customers in connection with and to support the sale of goods or provision of

<sup>1</sup> Cogenex announced on September 28, 1995, that it was discontinuing one of its principal business segments involving small self-generation projects.