

# SECURITIES AND EXCHANGE COMMISSION

## FORM U-1

Application or declaration under the act 1935

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### FILER

#### **EUA COGENEX CORP**

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SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

APPLICATION/DECLARATION  
on  
FORM U-1

APPLICATION/DECLARATION WITH RESPECT TO  
THE ORGANIZATION AND FINANCING OF A  
WHOLLY-OWNED SUBSIDIARY

under

THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 (the "ACT")

EUA COGENEX CORPORATION  
Boott Mills South, 100 Foot of John Street,  
Lowell, Massachusetts 01852

(Name of company or companies filing this statement and  
addresses of principal executive offices)

EASTERN UTILITIES ASSOCIATES

(Name of top registered holding company parent  
of each applicant or declarant)

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orders, notices and communications to:

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\*n\*

Item 1. Description of Proposed Transactions.

I. Introduction

A. Background of Applicant. This application-declaration is filed with the United States Securities and Exchange Commission (the "Commission") by EUA Cogenex Corporation ("EUA Cogenex"), a Massachusetts corporation and a wholly-owned subsidiary of Eastern Utilities Associates ("EUA"), a Massachusetts voluntary association and a registered holding company under the Public Utility Holding Company Act of 1935, as amended (the "Act"). The holding company system of EUA is sometimes hereinafter referred to as the "EUA System" or the "System".

B. Overview of Application. In this application/declaration EUA Cogenex requests authorization to form, organize and fund a new wholly owned corporate subsidiary ("EUA Cogenex-Canada") to carry on EUA Cogenex's business activities in Canada. Under order dated September 17, 1992 (Release No. 35-25636), EUA Cogenex is authorized to conduct its business subject to a "50% Restriction" which requires that less than 50% of EUA Cogenex's revenues be attributable to customers located outside of the New England/New York service area. For the purposes of determining compliance with the 50% Restriction, all activities relating to Qualifying Facilities ("QFs"), as defined in the Public Utility Regulatory Policies Act of 1978, are excluded. Subject to Commission authorization, as requested herein, all business activities conducted by EUA Cogenex and its subsidiaries in the Canadian provinces of Ontario, New Brunswick and Quebec, and all consulting services (defined in paragraph C(4) below) rendered by EUA Cogenex and its subsidiaries worldwide, would also be excluded from the 50% Restriction calculation. EUA Cogenex believes that there are significant opportunities for expansion of its business in Canada, and that the formation of a separate subsidiary to conduct such business is desirable.

C. Authorization of EUA Cogenex. By order dated December 19, 1986 (Release No. 35-24273), EUA was authorized to acquire all of the issued and outstanding capital stock of the energy management services company now known as EUA Cogenex. EUA Cogenex designs, finances, installs and maintains energy conservation and self-generation systems. EUA Cogenex is currently authorized: (i) to provide energy management services/shared savings ("EMS") to institutional, commercial/industrial and governmental customers to reduce their energy costs and consumption; (ii) to participate in utility-sponsored demand side management ("DSM") programs to decrease base load and peak demand on utilities' systems; (iii) subject to further Commission authorization, to develop self-generation ("COGEN") projects; and (iv) to render consulting services. Specifically, EUA Cogenex operates within the four above-listed market segments as follows:

(1) EMS: EUA Cogenex employs energy efficiency technology and equipment through building automation, lighting modifications, boiler replacement and other heat recovery methods to reduce electrical energy, fuel and other natural resource consumption and related costs of its customers. The principal equipment installed and maintained by EUA Cogenex for EMS projects consists of lighting equipment including, among other things, lamps, ballasts, reflectors, sensor switches and exit sign retrofit kits; variable speed drives used in connection with heating; ventilation and air conditioning systems; building automation control and conservation equipment; high efficiency motors; chillers and heat exchangers. EUA Cogenex is paid for these services primarily through "shared savings" agreements in which the customer, who owns or occupies a facility, pays EUA Cogenex a portion of the energy savings that result from the installation and maintenance of the energy efficient equipment in the facility. EUA Cogenex also purchases benefits under existing EMS contracts from other utilities and EMS providers. As part of its EMS business, EUA Cogenex also engages in the retail sale and concurrent installation of energy-conserving window film for residential, commercial, industrial and institutional sites, and sells reflectors wholesale to demand side management contractors.

(2) Utility-Sponsored DSM: In utility-sponsored DSM programs, EUA Cogenex contracts with the utility and its customers to provide energy management services to the utility's customers to reduce demands on the utility's system. EUA Cogenex is paid by the utility based on the reduction in the demand on the utility's system and may also receive a portion of the customer's savings.

(3) COGEN: EUA Cogenex develops COGEN projects in which an electric and heat generating facility is installed for a particular building or group of buildings. Typically, electricity and heat can be generated by the COGEN facility at a lower cost to the building owners or occupants than the retail cost of heating fuel and electricity sold by the local utility. When combined with other energy management services provided by EUA Cogenex, COGEN projects can result in savings to the owners or occupants, a portion of which is paid to EUA Cogenex. EUA Cogenex's strategy has been to keep its COGEN projects below the five megawatt (MW) level, sized to a minimum base load thermal requirement for the particular facility to avoid competition from larger independent power project developers. Almost all of the COGEN projects that EUA Cogenex currently owns, operates or has investments in are certified QFs, the revenues from which are excludable from the determination of EUA Cogenex's compliance with the 50% Restriction. EUA Cogenex will seek further authorization from the Commission prior to undertaking any new QF project.

(4) Consulting Services: EUA Cogenex performs and evaluates feasibility studies and provides assistance with respect to the design and implementation of energy savings programs tailored to customers' needs. In designing a tailored program for a customer, EUA Cogenex may develop and assess architectural, structural and engineering aspects of energy and other resource efficiencies, determine specifications for energy consuming equipment, design and market processes, programs, software and techniques to analyze energy conservation opportunities and results, and render general technical advice regarding energy management. These activities constitute consulting services in cases where EUA Cogenex is not directly involved in the performance of EMS, utility-sponsored DSM or COGEN projects.

D. Request for Further Modification of 50% Restriction.

(1) Request for EMS and DSM Activities Conducted in the Canadian Provinces of Ontario, New Brunswick and Quebec to be Excluded from 50% Restriction. SEC Order 35-25636 dated September 17, 1992 authorized expansion of EUA Cogenex's operational service area to include New York for the purpose of determining compliance with the 50% Restriction based on the "extensive coordinated planning and procedures between New York and New England supplemented by transmission interconnections allowing a significant amount of power for economy interchange and reliability between New York and New England" and the close coordination of resources and transmission facilities among all New England Power Pool ("NEPOOL") participants including the EUA System. For substantially the same reasons, EUA Cogenex hereby requests authorization to include revenues from its EMS and DSM activities in the Canadian provinces of Ontario, New Brunswick and Quebec with its revenues from the New England/New York service area, excluding all activities relating to QF's, for purposes of determining its compliance with the 50% Restriction.

The New York/New England utility service area is presently interconnected with Northeastern Canada through eleven separate transmission lines, and has power system interconnections with Ontario Hydro, Hydro-Quebec and the Maritimes region of Canada (including New Brunswick and Nova Scotia). Furthermore, EUA System companies participate in the Northeast Power Coordinating Council ("NPCC"), which was formed to promote the reliability and efficiency of the interconnected bulk power systems of its members through improved coordination in system design and operating procedures. EUA Cogenex believes that improving conservation in eastern Canada through EMS and DSM activities would directly benefit its New England/New York service area customers and improve reliability in New England for all NEPOOL participants by: (i) reducing the chances of overloaded transmission lines between New England and eastern Canada and minimizing the frequency of occasions when New England must

curtail power imports from Canada under various firm energy contracts due to Canadian power emergencies; (ii) making available more power in eastern Canada to send to New England during New England's peak demand and emergency periods; and (iii) freeing up low cost energy generated by hydroelectric projects in eastern Canada. EUA Cogenex therefore proposes that the characteristics described herein support the existence of "extensive coordinated planning and procedures ... supplemented by transmission interconnections allowing a significant amount of power for economy interchange and reliability" between the New England/New York service area and Canada's eastern provinces.

(2) Request for Revenues from Consulting Services to be Excludable: EUA Cogenex hereby requests that the revenues from its consulting services (defined in Section I.C(4) above) be excludable from the determination of its compliance with the 50% Restriction. To ensure that EUA Cogenex's consulting revenues do not include any revenues from EMS, utility-sponsored DSM or COGEN activities, EUA Cogenex states that: (1) its revenues will only be categorized as consulting revenues if EUA Cogenex is not at the same time also providing EMS, utility-sponsored DSM and/or COGEN activities for that customer; (2) if a consulting services client of EUA Cogenex requests that EUA Cogenex also provide EMS, utility-sponsored DSM or COGEN activities, all revenues received from that customer, until the EMS, utility-sponsored DSM or COGEN activities are completed, would be subject to the 50% Restriction; and (3) if a customer for whom EUA Cogenex is providing EMS, utility-sponsored DSM or COGEN activities requests that EUA Cogenex also provide a consulting service or services, all revenues from that customer would be subject to the 50% Restriction until all EMS, utility-sponsored DSM or COGEN activities are completed.

E. Reasons for Expansion in the Canadian Market. EUA Cogenex believes that in addition to providing valuable and timely services to Canadian utilities and their customers, the expansion of EUA Cogenex's activities in Canada will be beneficial (i) for the New York/New England utility service area, (ii) for the business and profitability of EUA Cogenex, and (iii) for EUA Cogenex's competitive position generally.

(1) Benefits to the New York/New England Utility Service Area: As discussed in paragraph I.D(1) above, the New York/New England utility service area is presently interconnected with northeastern Canada and the Maritimes region, and the reliability and efficiency of power delivery between these neighboring systems is enhanced by the planning and coordination efforts of the NPCC. The sharing of reserves among New England/New York and eastern Canadian power sources allows for a reduction in installed generating capacity and the transfer of power for enhanced economic and reliability purposes. The Applicant

believes that the operation of a subsidiary of EUA Cogenex in Canada would significantly further the purposes of the NPCC and enhance the pooled benefits to be shared across power systems in the Northeast. (For additional support, see Northeast Utilities application-declaration on Form U-1, File No. 80-8086.)

(2) Benefits for the Business and Profitability of EUA Cogenex: EUA Cogenex believes that it is well positioned using its existing resources and technological know-how to provide state of the art energy management and demand side management services and, subject to further Commission authorization, to develop COGEN projects in the rapidly developing Canadian market. The profits generated by the Canadian business would either be reinvested or paid to EUA Cogenex. These profits would also indirectly benefit the EUA System by enhancing the attractiveness of an investment in the common shares of EUA.

(3) Benefits with respect to the Competitiveness of EUA Cogenex: The execution of the North American Free Trade Agreement (NAFTA), recent economic and political developments in Canada and this country's growing emphasis on global environmental responsibility and international competitiveness have created timely opportunities for EUA Cogenex to expand its business in Canada. Additionally, EUA Cogenex believes that such Canadian experience would enhance not only the management capabilities of its employees but the competitiveness of EUA Cogenex generally.

F. Subsidiary Structure Preferable for EUA Cogenex-Canada. Upon authorization, EUA Cogenex proposes to conduct its Canadian business through a new subsidiary for tax and administrative reasons. Additional advantages of structuring Canadian activities through a corporate subsidiary include:

(1) insulation of EUA Cogenex from legal liability for obligations of the Canadian activities of EUA Cogenex, absent any guarantee or contractual arrangement to the contrary;

(2) simplification of contracting and insulation of EUA Cogenex: (i) from requirements under Canadian regulations; and (ii) from specific contract provisions which might be burdensome to otherwise avoid;

(3) establishment of a convenient operational mechanism for accounting for appropriate EUA Cogenex and EUA Service Corporation employee services performed for, and resources rendered to, outside parties;

(4) maintenance of separate books and accounts enabling direct and periodic measurement of the efficiency and profitability of EUA Cogenex's Canadian activities; and



(5) establishment of a mechanism which would not unduly or excessively complicate the capital structure of the EUA System for the payment of dividends derived from such business directly to EUA Cogenex.

## II. Proposed Activities and/or Transactions

A. Formation of "EUA Cogenex-Canada". EUA Cogenex hereby requests authorization to form, acquire the capital stock of and finance a direct wholly-owned subsidiary to be incorporated under the laws of Canada ("EUA Cogenex-Canada"). EUA Cogenex would initially subscribe to 100 shares of the common stock of EUA Cogenex-Canada at a subscription price of \$1.00 per share. As the sole stockholder of EUA Cogenex-Canada, EUA Cogenex would prepare and file a Stockholder's Declaration pursuant to Section 146 of the Canada Business Corporations Act to restrict in whole the powers of the directors of EUA Cogenex-Canada, thereby retaining management and control of EUA Cogenex-Canada in EUA Cogenex indefinitely.

B. Request for Authorization of Capitalization and Financing for EUA Cogenex-Canada. EUA Cogenex hereby requests authorization from time to time through December 31, 1999 to subscribe for and purchase additional shares of EUA Cogenex-Canada common stock, and to make capital contributions in cash or in kind, open account advances and/or short-term loans to EUA Cogenex-Canada (such contributions, advances, loans and purchases of capital stock, collectively, the "Cogenex Investments"), up to an aggregate of \$20,000,000. All short-term loans and advances by EUA Cogenex to EUA Cogenex-Canada would be made on the basis of the terms and conditions authorized and available to EUA Cogenex under the EUA System's lines of credit, as set forth in EUA Release No. 35-25839 (June 29, 1993), as such order from time to time may be supplemented.

EUA Cogenex hereby also requests authorization for EUA Cogenex-Canada from time to time through December 31, 1999 to effect short term borrowings from lending institutions and for EUA Cogenex to guarantee such borrowings as necessary, in an aggregate amount together with the Cogenex Investments not to exceed U.S. \$20,000,000. The interest rate on such borrowings shall not exceed the commercial base rate at The First National Bank of Boston at the time any such loan is made. Any such borrowings and guarantees shall be in accordance with the EUA System's authorized lines of credit.

C. Consolidated Revenues of EUA Cogenex-Canada Subject to 50% Restriction. As described in paragraphs B and C(3) of Section I above, EUA Cogenex is currently restricted to earning less than 50% of its revenues (other than revenues in connection



with the ownership, operation or investment in QFs) from outside the New England and New York service area. Upon Commission authorization, which is hereby requested, EUA Cogenex and, upon its formation, EUA Cogenex-Canada, also would be authorized to: (1) expand the New England-New York service area to include the Canadian provinces of Ontario, New Brunswick and Quebec for the purposes of determining EUA Cogenex's compliance with the 50% Restriction; and (2) provide consulting services (as defined in paragraph C(4) of Section I above) worldwide, with the revenues from such consulting services to be excludable from calculation of the 50% Restriction. The balance of the revenues of EUA Cogenex-Canada will be consolidated with the other revenues of EUA Cogenex for purposes of determining compliance with the 50% Restriction. The criteria set forth in this paragraph II.C and in paragraphs I.C(4) and I.D above are the same in principle as those underlying the Commission's previous grant of authorization to exclude from the service area restriction all revenues attributable solely to the worldwide consulting activities of HEC Inc., a wholly-owned non-utility subsidiary of Northeast Utilities. (See Release No. 35-25900 dated September 30, 1993.)

### III. Intercompany Activities and/or Transactions.

A. Service Agreement Between EUA Cogenex-Canada and EUA Service. EUA Cogenex anticipates that EUA Service Corporation will provide management, financial, accounting and other services to EUA Cogenex-Canada upon its formation pursuant to the terms and conditions of a standard System Service Agreement in the form attached hereto as Exhibit B-1.

B. Provision of Equipment and Services by EUA Cogenex to EUA Cogenex-Canada. EUA Cogenex hereby requests Commission authorization to provide equipment and services to EUA Cogenex-Canada as and when required, on a fair market value basis but in no event at less than cost. None of the EUA System operating companies will render services to EUA Cogenex-Canada without first seeking further Commission authorization.

C. Licensing of Know-How. EUA Cogenex hereby requests Commission authorization to license the use of appropriate know-how, technologies, models and systems for conservation and load management services to EUA Cogenex-Canada under a License Agreement substantially in the form of License Agreement to be filed by amendment as Exhibit B-2 hereto. No EUA System company other than EUA Cogenex will transfer or license its know-how and technology to EUA Cogenex-Canada without first seeking further Commission authorization.

Neither EUA Cogenex nor any subsidiary thereof has acquired an ownership interest in any exempt wholesale generator ("EWG") or a foreign utility company ("FUCO") as defined in Sections 32

and 33 of the Act, or now is or as a consequence of the transactions proposed herein will become a party to or has or will as a consequence of the transactions proposed herein have any right under a service, sales or construction contract with an EWG or FUCO, except in accordance with the provisions of the Act.

Item 2. Fees, Commissions and Expenses.

The estimate of fees, commissions and expenses to be paid or incurred directly or indirectly in connection with the proposed transactions will be filed by amendment.

Item 3. Applicable Statutory Provisions.

Transactions	Applicable Sections
Issuance and sale by EUA Cogenex-Canada to EUA Cogenex of the notes and common stock of EUA Cogenex-Canada.	Sections 6(a) and 7 and Rule 43(a).
Purchase by EUA Cogenex of the notes and shares of common stock of EUA Cogenex-Canada.	Sections 9(a), 10 and 12(b); Rule 45(a).
Prepayment by EUA Cogenex-Canada of its notes or other obligations held by EUA Cogenex.	Section 12(c); exempt from Rule 42 by paragraph (b)(2) thereof.
Open account advances, short-term loans and guaranties by EUA Cogenex to, and receipt thereof by, EUA Cogenex-Canada.	Section 12(b); Rule 45(a).
Capital contributions by EUA Cogenex to, and receipt thereof by, EUA Cogenex-Canada.	Section 12(b); Rule 45(a).
Provision of services and goods by EUA Cogenex and EUA Service to EUA Cogenex-Canada.	Section 13(b); Rules 86, 87, 90, and 91 thereunder.
Licensing of know-how and technology by EUA Cogenex to EUA Cogenex-Canada.	Section 13(b); Rule 90(a)(2).

Item 4. Regulatory Approval.

No consent or approval of any state commission or any federal commission other than the Securities and Exchange Commission is necessary for the transactions which are the subject of this Application/Declaration.

Item 5. Procedure.

(a) In order to enable the Applicant to enter into the proposed transactions promptly, the Applicant hereby requests that this application/declaration be granted and made effective at the earliest convenient date.

(b) It is not considered necessary that there be a recommended decision by a hearing officer or by any other responsible officer of the Commission. The Office of Public Utility Regulation may assist in the preparation of the Commission's decision and it is believed that a 30-day waiting period between the issuance of the Commission's order and the date on which the order is to become effective would not be appropriate.

Item 6. Exhibits and Financial Statements.

(a) Exhibits.  
(\* Filed herewith)

A-1 Form of Articles of Incorporation of EUA Cogenex-Canada. (To be filed by amendment.)

A-2 By-laws of EUA Cogenex-Canada. (To be filed by amendment.)

A-3 Shareholder Declaration of EUA Cogenex as EUA Cogenex-Canada's Sole Stockholder (to be filed by Amendment.)

B-1 Form of Service Contract between EUA Service and EUA Cogenex-Canada. (To be filed by amendment.)

B-2 Form of License Agreement between EUA Cogenex and EUA Cogenex-Canada. (To be filed by amendment.)

C None.

D None.

E None.

- F-1 Form of Opinion of U.S. Counsel. (To be filed by amendment.)
- F-2 Form of Opinion of Canadian Counsel (To be filed by amendment.)
- G None.
- H Proposed Form of Notice. (To be filed by amendment.)
- (b) Financial Statements.  
(to be filed by amendment.)

Item 7. Information as to Environmental Effects.

The transactions described in Item 1 do not involve major federal action significantly affecting the quality of the human environment. No federal agency has prepared or is preparing an environmental impact statement with respect to the proposed transactions.

SIGNATURES

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

EUA COGENEX CORPORATION

By: \_\_\_\_\_  
Clifford J. Hebert, Jr.  
Treasurer

DATED: July 8, 1994

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