

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'82 SEP 15 110:12

COMMISSIONERS:

Nunzio J. Palladino, Chairman
Victor Gilinsky
John F. Ahearne
Thomas M. Roberts
James K. Asselstine

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

SERVED SEP 15 1982

In the Matter of
TENNESSEE VALLEY AUTHORITY
(Browns Ferry Nuclear Plant,
Units 1, 2 and 3)

Docket Nos. 50-259 OLA
50-260 OLA
50-296 OLA

ORDER

On April 16, 1982 the Commission took review of two issues regarding the Appeal Board's decision in ALAB-664 to withhold consideration of certain contentions on the Tennessee Valley Authority's (TVA) application to store low-level radioactive waste at the Browns Ferry Nuclear Plant (Browns Ferry) until after the NRC staff issued its environmental analysis. Shortly after the parties submitted their briefs to the Commission, the Appeal Board learned that TVA had substantially amended its application to store low-level waste at Browns Ferry. After reviewing submittals by counsel for TVA and the NRC staff, the Appeal Board in ALAB-677 found that the amended application constituted a "material alteration of TVA's earlier presentation" because that amendment "significantly modified, if not entirely superseded" the "principal evidentiary support" for TVA's initial application. Slip op. at 7. For these reasons, the Appeal Board opined

that its decision might have been different had the Board had TVA's amended application. The Appeal Board stated:

"Clearly, the new document, which superseded Enclosure 2 was material to the resolution of the issues before us. Indeed, timely presentation of the new information, with appropriate opportunity for comment or rebuttal, might well have changed the outcome of the appeal." (Slip op. at 10.)

In view of this development, the Commission has now determined that review was improvidently granted in this proceeding. See e.g., Taggart v. Weinaeller's Inc., 397 U.S. 223 (1970); Murel v. Baltimore City Criminal Court, 407 U.S. 355 (1972). Accordingly, the Commission dismisses the grant of review even though the parties have briefed the issues. See e.g. Jones v. State Board of Education, 397 U.S. 31 (1970). Since ALAB-664 was based on a record that no longer represents the situation in this case and will not be reviewed by the Commission, that decision is hereby vacated and shall be given no weight as a precedent. The case is remanded to the Appeal Board for further proceedings. Boston Edison Company (Pilgrim Nuclear Power Station, Unit 2), ALAB-656, 14 NRC 965 (1981); Rochester Gas and Electric Corporation (Sterling Power Project, Nuclear Unit No. 1), ALAB-596, 11 NRC 867 (1980). See also A.L. Meckling Barge Lines, Inc. v. United States, 368 U.S. 324 (1961); United States v. Munsingwear, Inc., 340 U.S. 36 (1950).

Commissioners Ahearne and Roberts dissent from this decision.

It is so ORDERED.

For the Commission *




SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.
this 15th day of *September* 1982.

* Chairman Palladino was not present when this Order was approved. Had Chairman Palladino been present at the meeting he would have voted with the majority. To enable the Commission to proceed with this case without delay, Commissioner Roberts, who was a member of the minority on the question up for decision, did not participate in the formal vote.