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August 25, 1982

SECY-82-355

**ADJUDICATORY ISSUE**  
(Information)

For: The Commissioners

From: Sheldon L. Trubatch  
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Subject: ALAB-677 (IN THE MATTER OF TENNESSEE VALLEY AUTHORITY)

Facility: Browns Ferry Nuclear Plant (Units 1, 2 and 3)

Purpose: To inform the Commission of an Appeal Board Memorandum. 1/

Discussion: On June 10, 1982, the Appeal Board issued a Memorandum (ALAB-677) finding that the parties had failed to provide the Board with documents material to a pending appeal on the Tennessee Valley Authority's (TVA) application to store low-level waste at the Browns Ferry site. See ALAB-664 (Tennessee Valley Authority, Browns Ferry Nuclear Plant, Units 1, 2 and 3), 15 NRC 1 (1982)).

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1/ Because this Appeal Board decision does not include an Order, the decision is of no operative legal significance.

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In particular, TVA failed to serve on the parties or notify the Board of a significant amendment to the application.

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a "material alteration of TVA's earlier presentation" because that amendment "significantly modified, if not entirely superseded" the "principal evidentiary support for TVA's initial application."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. 2/

Accordingly, the Appeal Board believes that TVA violated the Commission's long-standing requirement to keep the Board informed. The Board also expressed concern that the staff's internal procedures were inadequate to keep staff counsel apprised of material developments regarding a pending license

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2/ The Appeal Board opined that its decision in ALAB-664 might have been different had the Board timely considered TVA's amended application. The Appeal Board stated:

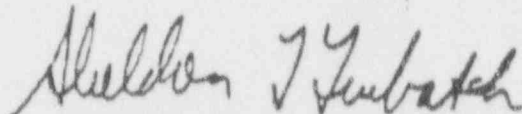
Clearly the new document, which superseded Enclosure 2 was material to the resolution of the issues before us. Indeed, timely presentation of the new information, with appropriate opportunity for comment or rebuttal, might well have changed the outcome of the Appeal.

EX 5

application. However, the Board could take no action other than to express its concern because jurisdiction passed to the Commission when it decided to take review of ALAB-664.

This is not the first time that TVA has been rebuked in this proceeding for deficiencies regarding its responsibilities to provide information in a timely manner. ALAB-664, p. 20, and dissenting opinion of Mr. Eilperin, p. 32, n.6. Nor is this the first proceeding in which TVA's counsel has had to be reminded of its responsibilities in NRC proceedings. ALAB-664, supra, p. 32, n.6.

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