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Gentlemen:

I have discovered additional information which overwhelmingly supports the Midland and Mapleton Intervenors' right to financial assistance in these Midland suspension hearings.

Accordingly, I am forwarding this information on in order to assist the Board in moving as quickly as possible to have funds committed to us.

The additional citations are as follows:

1. A report of February 1976 from the Government Accounting Office and prepared by the Office of the Comptroller General. This report bears file No. B-922-88 and in this letter, the Comptroller General ruled:

"...that the NRC has implied authority to reimburse impecunious intervenors."
2. The NRC under date of November 18, 1976 (see 41 Federal Register 50829-38) issued a decision concerning the aforementioned February 1976 report and denied fees. However, the last paragraph of the NRC document refers to "rare instances" where funding may be necessary and where the NRC may direct the staff to help in funding, despite the general conclusion of the NRC (clearly erroneous) to the contrary. Clearly, Midland is such a rare and necessary case.
3. In 1975 and based on GAO reports (including a July 24, 1972 GAO report bearing file No. B-139-703), the Consumer Product Safety Commission adopted a regulation providing

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for financial assistance to impecunious groups who are capable of providing valuable information to the Consumer Product Safety Commission in connection with the adoption of safety standards. The C.P.S.C. took this action based upon its inherent power to make certain that the public participates in its decisions.

4. In November, 1975 the then Secretary of Transportation, William Coleman, ordered the FAA to provide funds for citizens groups in a particular case to travel to Denver and participate in safety hearings. The rationale was that the citizens groups were necessary to the FAA's over-all responsibility to the public interest.
5. A rather complete collection of Federal Agencies' funding of public intervenors can be found in a report prepared by Senator Edward Kennedy's office. The report bears Senate Document No. 94-863, is dated May 13, 1976, and was part of the basis for S. 2715 which was submitted to Congress.

Perhaps this most direct citation is a recent case from the Court of Appeals for the Second Circuit, Greene Cty. Planning Bd. v. FPC, -F.2d- reported in 45 U.S. Law Week 2319-20. In this case, the Court of Appeals for the Second Circuit ordered the Federal Power Commission, over the Commission's objections that it did not have statutory authority, to provide certain intervenors costs and expenses and attorneys' fees. The Court of Appeals indicated that while express statutory authorization may be required before a court or regulatory commission can order one litigant to pay a prevailing litigant's expenses, the situation is different when the agency itself is compelled to provide the fees and expenses because "...it involves no exercise of compulsion against a private party."

The Court went on to state a further basis for its ruling as follows:

"Public hearings are integral to the functioning of an agency such as the FPC, and authorization for reimbursement of indigent intervenors who make important contributions in these hearings can reasonably be found in the agency's general statutory mandate. 16 U.S.C. § 793 authorizes the commission to 'make such expenditures...as are necessary to to execute its functions.' On this basis, the Comptroller General's decision is not clearly incorrect and as a consequence the FPC now appears to have authorization to pay intervenors' expenses."