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November 4, 2013

BY ELECTRONIC MAIL (washoshrccommission@oshrc.gov)

The Honorable Ray H. Darling, Jr., Executive Secretary Occupational Safety and Health Review Commission

Re: Kiewit Power Constructors Co., OSHRC Docket No. 11-2395

Dear Mr. Darling:

KPCC respectfully submits the following regarding the Secretary's reply to its citation of additional authorities: Contrary to the Secretary's principal argument that the authorities are "inapplicable because they concern…retroactiv[ity]," at least one (*Ledezma-Galicia v. Holder*, 636 F.3d 1059, 1067, 1075 (9th Cir. 2010), *cert. denied*, 555 U.S. 1170 (2009)) concerns implied repeal—thus showing that the principle of *INS v. St. Cyr*, 533 U.S. 289, 320 n.45 (2001), applies to any matter required to be clear.

Please distribute this letter to the Commission and the General Counsel, and electronically acknowledge receipt to <u>asapper@mwe.com</u>.

Respectfully submitted,

apper

/s/ Arthur G. Sapper

cc: Messrs. Glabman and Joseph (electronic service certified this date)