

October 2, 2014

**BY ELECTRONIC MAIL ([washshrcommission@oshrc.gov](mailto:washshrcommission@oshrc.gov))**

The Honorable John X. Cerveny, Executive Secretary  
Occupational Safety and Health Review Commission

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

Dear Mr. Cerveny:

By analogy to FED.R.APP.P. 28(j), KPCC respectfully cites these supplemental authorities:

- *Sorenson Comm. Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014) (review by D.C. Circuit of APA “good cause” claim is *de novo*), re KPCC Br. 33 & n. 17.
- *Nat. Res. Def. Council v. EPA*, No. 98-1379 (D.C. Cir., June 27, 2014) (slip op. at 16-18) (barring legal theory not in original rationale for rule), *reh'g and reh'g en banc on another grnd. denied* (Sept. 22, 2014), re KPCC Br. 29, 30, 34-35; KPCC Rep. Br. 5.
- *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439, 1444-45 & n.8 (D.C. Cir. 1988) (no deference to agency; ambiguities to be resolved for Indian tribe), re KPCC Br. 17; KPCC Rep. Br. 2-3; Sec. Br. 16; and Sec. Rep. Br. 2-4.

Respectfully submitted,



/s/ Arthur G. Sapper

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