



0000211070

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JIM O'CONNOR – CHAIRMAN
LEA MÁRQUEZ PETERSON
ANNA TOVAR
KEVIN THOMPSON
NICK MYERS

Arizona Corporation Commission

DOCKETED

MAY 13 2024

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
MOUNTAIN STATES CONTRACT SWITCHING,
LLC FOR APPROVAL FOR THE CONSTRUCTION
OF A NEW INDUSTRY RAIL CROSSING ON 147th
AVENUE BETWEEN NORTHERN AVENUE AND
ECHO LANE IN THE CITY OF GLENDALE,
ARIZONA (DOT #981 253P).

DOCKET NO. RR-21275A-23-0305

DECISION NO. 79346

OPINION AND ORDER

DATE OF HEARING: March 14, 2024

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Marc E. Stern

APPEARANCES: Mr. Brian M. Mueller, RUSING LOPEZ & LIZARDI, on behalf of Mountain States Contract Switching, LLC;

Mr. Russ Romney, Office of the City Attorney, on behalf of the City of Glendale; and

Ms. Bridget A. Humphrey, Staff Attorney, Legal Division, on behalf of the Safety Division of the Arizona Corporation Commission.

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission (“Commission”) finds, concludes, and orders that:

FINDINGS OF FACT

1. On November 13, 2023, the City of Glendale, Arizona (“Glendale” or “City”) filed a letter that was inadvertently characterized as its Application with the Commission for approval of the construction of a new industry rail crossing on 147th Avenue which is being extended between Northern Avenue and Echo Lane in Glendale (DOT #981 253P). The letter described Glendale’s position with respect to the crossing and also included a copy of a letter from Mountain States Contract Switching,

1 LLC (“MSC” or “Applicant”) which described MSC’s obligation for constructing, operating and
2 maintaining the lights and gates of the at-grade crossing at issue. The letter from Glendale clearly
3 states the City will be the road authority and not the operator of the crossing. Under those
4 circumstances, it was clear that Glendale was not the Applicant. MSC is the Applicant, and the caption
5 for this matter was revised to reflect the same.

6 2. On November 16, 2023, a Procedural Order regarding Consent to Email Service was
7 issued.

8 3. On December 5, 2023, MSC filed a request to intervene in the proceeding, but this action
9 was not required since it had been determined that MSC is a necessary party in the proceeding as the
10 Applicant and not an intervenor.

11 4. On December 12, 2023, by Procedural Order, MSC was designated as the Applicant in
12 this proceeding, and the City was designated as an Intervenor.

13 5. On January 12, 2024, the Commission’s Safety Division (“Staff”) filed its Staff Report
14 which recommended approval of the Application.

15 6. On January 23, 2024, by Procedural Order, a hearing in this matter was scheduled to
16 commence on March 14, 2024, and notice requirements and other procedural deadlines were
17 established.

18 7. On February 16, 2024, a copy of the Notice of Publication was filed with the
19 Commission.

20 8. On March 14, 2024, the hearing was convened before a duly authorized Administrative
21 Law Judge (“ALJ”) of the Commission at the Commission’s offices in Phoenix, Arizona. MSC, the
22 City, and Staff appeared with counsel. At the conclusion of the hearing, the matter was taken under
23 advisement pending submission of a Recommended Opinion and Order to the Commission.

24 9. The Application requests the Commission’s approval for MSC to construct a new
25 industry at-grade rail crossing which will extend from the tracks of the Burlington Northern Santa Fe
26 Railway (“BNSF”) approximately one-half mile to the east to a new manufacturing facility which is
27 being constructed and known as the Nestlé Dynasty Facility (“Nestlé”). Nestlé will manufacture Coffee
28 mate creamer at its location in a development known as the Woolf Logistics Center (“Woolfe”).

1 10. The new crossing will be at-grade with active warning signals and gate units. 147th
2 avenue is a public two-lane collector road under the authority of the City. According to the Application,
3 147th Avenue is under construction with a scheduled completion date of December 31, 2023
4 (Application 2).

5 11. The area in which 147th Avenue is being extended is presently rural farmland that is
6 being developed as part of Woolfe. The Application indicates that the industrial project is being served
7 by rail though an industry agreement between BNSF and MSC and the crossing is to make a roadway
8 connection to Woolfe (Application 2). The BNSF's tracks are about a half mile to the east of the new
9 plant site for Nestlé. (Tr. 10)

10 12. Mr. Joseph Vern Van de Loo, the President of MSC, was involved in the preparation of
11 the Application and testified for MSC (Tr. 15). He stated that MSC was a railroad design and
12 construction company and also an industrial switching company that has been in business since 1983.
13 (Tr. 8)

14 13. Mr. Van de Loo related that Nestlé is in the process of building a new manufacturing
15 facility and that the construction of the industry track will enable Nestlé to bring its raw materials to its
16 plant by rail. (Tr. 9) According to Mr. Van de Loo, completed products leaving the Nestlé plant will
17 leave by truck and not by rail (Tr. 21)

18 14. Mr. Van de Loo testified that MSC agrees with Staff's conclusions and
19 recommendations in the Staff Report. (Tr. 17)

20 15. Mr. Van de Loo indicated that the safety measures to be constructed at the at-grade
21 crossing will be consistent with similar crossings in Arizona. (Tr. 18)

22 16. The crossing is expected to cost approximately \$400,000. (Tr. 18)

23 17. Mr. Van de Loo further stated that MSC is working as a subcontractor to Boldt, a general
24 contractor for Nestlé. (Tr. 20)

25 18. The City did not present any testimony.

26 19. Mr. Jason Pike, a Grade Crossing Inspector for the Commission, was assigned to
27 evaluate MSC's Application and prepared the Staff Report. (Tr. 23)

28 20. Mr. Pike testified that the at-grade crossing at 147th Avenue does not meet any of the

1 criteria for grade separation and there is no traffic involving hospitals or schools in the area. (Tr. 24)

2 21. Mr. Pike further stated that only 40 railcars a week will be transported to the plant to
3 provide it with raw material for the manufacture of Nestlé's products. (Tr. 26) The Staff Report
4 indicates that the City estimates that in 2027, 710 vehicles per day will use the crossing.

5 22. Mr. Pike indicated that the safety measures being constructed at the 147th Avenue
6 crossing by MSC are consistent with similar at-grade crossings in Arizona. (Tr. 25)

7 23. Mr. Pike further testified that maintenance of the crossing will be the responsibility of
8 MSC as would the signals related to the crossing. The roadway will be maintained by the City. (Tr. 27)

9 24. According to Mr. Pike, the crossing is in the public interest and he is recommending the
10 Commission's approval of this crossing.

11 25. Mr. Pike indicated that 12 months would be a sufficient amount of time to complete
12 construction of the at-grade crossing at 147th Avenue by MSC. (Tr. 27)

13 Conclusion

14 26. Based on the record, the proposed construction of the at-grade crossing as described in
15 the Application and as supported by Staff's recommendations are reasonable and appropriate and
16 should be adopted.

17 CONCLUSIONS OF LAW

18 1. The Commission has jurisdiction of the parties and the subject matter of the Application
19 pursuant to Article XV of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") § 40-336,
20 40-337, 40-337.01.

21 2. Notice of the Application was provided in accordance with the law.

22 3. The construction of the at-grade crossing is necessary for the public's convenience and
23 safety.

24 4. Pursuant to A.R.S. § 40-336 and 40-337, the Application should be approved as
25 recommended by Staff.

26 5. Upon completion of the at-grade crossing of 147th Avenue as described herein, MSC
27 shall maintain the crossing in accordance with A.A.C. R14-5-104.

28 ...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

IT IS THEREFORE ORDERED that the Application of Mountain States Contract Switching, LLC., as described herein is hereby approved.

IT IS FURTHER ORDERED that Mountain States Contract Switching, LLC shall complete the at-grade crossing as discussed in the Application and the Staff Report within 12 months of the effective date of this Decision.

IT IS FURTHER ORDERED that Mountain States Contract Switching, LLC shall notify the Commission’s Safety Division, in writing, within 10 days of both the commencement and completion of the at-grade crossing, pursuant to A.A.C. R14-5-104.

...
...
...
...
...
...
...
...
...
...
...
...
...
...
...
...
...
...
...
...

1 IT IS FURTHER ORDERED that upon completion of the construction of the at-grade crossing
2 Mountain States Contract Switching, LLC shall maintain the crossing in compliance with A.A.C. R14-
3 5-104.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6
7  
8 CHAIRMAN O'CONNOR COMMISSIONER MARQUEZ PETERSON

9   
10 COMMISSIONER TOVAR COMMISSIONER THOMPSON COMMISSIONER MYERS



11
12 IN WITNESS WHEREOF, I, DOUGLAS R. CLARK,
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 13th day of MAY 2024.

17 
18 DOUGLAS R. CLARK
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____
22 MS/(gb)

23
24
25
26
27
28

1 SERVICE LIST FOR: MOUNTAIN STATES CONTRACTING, INC.

2
3 DOCKET NO.: RR-21275A-23-0305

4 Brian M. Mueller
5 6363 N. Swan Riad, Suite 151
6 Tucson, AZ 85718
7 Attorney for Mountain States Contracting, Inc.

8 Jonathan M. Saffer
9 MOUNTAIN STATES CONTRACTING, INC.
10 4001 S. 34th Street
11 Phoenix, AZ 85040

12 Tony S. Abbo, P.E., PTOE
13 City Traffic Engineer Transportation Department
14 6210 W. Myrtle Ave #112
15 Glendale, AZ 85301
16 tabbo@glendaleaz.com

Consented to Service by Email

17 Russ Romney, Office of the City Attorney
18 5850 W. Glendale Avenue, Suite 450
19 Glendale, AZ 85301
20 Attorney for the City of Glendale, Transportation Department
21 RRomney@glendaleaz.com

Consented to Service by Email

22 Legal Division
23 ARIZONA CORPORATION COMMISSION
24 1200 West Washington Street
25 Phoenix, AZ 85007
26 LegalDiv@azcc.gov
27 cwatson@azcc.gov

Consented to Service by Email

21
22
23
24
25
26
27
28