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Port of Portland Prevails in Dispute over Payment of PDX's Utility Bills

May 24, 2018 | Peter J. Hopkins

The Federal Aviation Administration rejected claims brought against the Port of Portland by the Air Transport Association of America d/b/a Airlines for America and the airlines serving the Portland International Airport. At issue was whether the Port, which owns and operates PDX, is violating federal law when paying certain utility charges to the City of Portland as part of PDX's operating costs. The FAA's Final Agency Decision is linked below.

PDX sits within City limits and receives water and sewer services from the City. The dispute arose when the City's combined sewer/stormwater/water bill began breaking out separate charges to cover the cost of managing stormwater on public property throughout the City, and the cost of participating in the environmental investigation and cleanup of a Superfund site on the banks of the Willamette River. These costs are allocated by formula to all City water and sewer utility ratepayers, including the Port as PDX's owner.

The airlines argued that airport revenue cannot be used to pay for the disputed utility charges because they are being imposed to pay for things that are not directly or substantially related to PDX, in violation of the federal airport revenue use restrictions. Alternatively, the airlines argued that the disputed utility charges are an impermissible tax or fee on air transportation at PDX, in violation of the federal Anti-Head Tax Act.

FAA adopted the Port's legal reasoning, concluding that "payment of customary utility fees that do not target the airport, that constitute normal operating costs of any entity operating in the jurisdiction, that convey value upon all of the community, including the airport, and that transparently allocate costs on a reasoned basis do not violate Federal law or obligations as they relate to the FAA."

Pablo Nüesch, Peter Hopkins, and Jessica Bell represented the Port of Portland before FAA.

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