

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

Arlet Aviation, LLC,

Complainant,

v.

Puerto Rico Ports Authority,

Respondent.

FAA Docket No. 16-17-17

ORDER

I. INTRODUCTION

Arlet Aviation, LLC, (Arlet) filed a Complaint, pursuant to 14 CFR part 16, against the Puerto Rico Ports Authority (Ports Authority), sponsor of the Fernando Ribas Dominicci Airport in Isla Grande, Puerto Rico (Isla Grande), and the Jose Aponte de la Torre Airport in Ceiba, Puerto Rico (Ceiba). Arlet alleges the Ports Authority violated Grant Assurance 22 (c) and (d), *Economic Nondiscrimination*, by allowing Million Air San Juan Corp. (Million Air), to operate without a valid and current lease. (FAA Exhibit 1, Item 1.)

In its Motion to Dismiss, the Ports Authority claims Arlet lacks standing to bring this complaint, is not compliant with FAA's requirement of good faith pre-filing negotiations to avoid such a complaint, and is not compliant with FAA orders. The Ports Authority claims, in the alternative, the Complaint should be dismissed as moot. (FAA Exhibit 1, Item 6.) Arlet opposed the Motion to Dismiss and requested leave to file an amended complaint stating the Ports Authority's new agreement with Million Air provides illegal subsidies and does not collect sufficient rents from Million Air, violating the requirements of Grant Assurance 25, *Airport Revenues*.

The Ports Authority's Motion to Dismiss is GRANTED, the complaint is DISMISSED with prejudice, and Arlet's motion to amend its complaint is DENIED.

II. PARTIES

A. Puerto Rico Port Authority

The Puerto Rico Ports Authority is the sponsor of most Federally obligated assisted airports in Puerto Rico, with the exception of Luíís Muñoz Marín International Airport (SJU). (FAA Exhibit 1, Item 1.) The Ports Authority is a government owned public corporation charged with the

operation, maintenance, and improvement of the Isla Grande airport and the Ceiba airport, both of which are funded, in part, through Airport Improvement Program funds. (FAA Exhibit 1, Item 1.) As a condition of receiving Federal funding, the Ports Authority has agreed to comply with FAA's sponsor grant assurances. (FAA Exhibit 1, Item 1.)

B. Arlet

Arlet is an authorized Fixed Based Operator (FBO<sup>1</sup>) and Maintenance Repair Organization at the Ceiba airport. (FAA Exhibit 1, Item 1, p.3.)

III. BACKGROUND

A. Procedural.

The Complaint, dated November 16, 2017, (FAA Exhibit 1, Item 1) was received by the FAA on November 17, 2017, and docketed on December 11, 2017, as Docket No. 16-17-17. (FAA Exhibit 1, Item 2.)

On December 18, 2017, the FAA issued a Supplemental Notice of Docketing advising the parties that the material provisions of any exhibits relied upon or cited by any of the parties in this proceeding must be fully and accurately translated into English by the party relying on or citing the provisions. The parties were further advised that any untranslated exhibit or provision may be disregarded at the discretion of the FAA. (FAA Exhibit 1, Item 3.)

The Complaint's Exhibit A (containing sub-exhibit 4 (portions), and sub-exhibits 5, 6, 7, and 9), Exhibit D, Exhibit F, and Exhibit G, and the proffered Amended Complaint's Exhibit J are written in Spanish. Arlet has not filed translations of these documents. Arlet argues that because the documents are the Ports Authority's documents, they do not require translation and, further, that the material portions have been translated. (FAA Exhibit 1, Item 9, p.3.)

The Ports Authority filed a "Request for Clarification of Deadline and, in the alternative, Request for Extension of Time" on January 2, 2018, and again on January 17, 2018. Arlet has not responded to these Requests. (FAA Exhibit 1, Items 4 and 5, respectively.)

On March 20, 2018, the FAA received a Motion to Dismiss filed by the Ports Authority. (FAA Exhibit 1, Item 6.) In accordance with 14 CFR §16.26(b)(3), a complainant may file an answer to the motion to dismiss within 10 days after service of the motion. The answer to the motion was

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<sup>1</sup> A fixed-base operator (FBO) is a commercial entity, providing multiple aeronautical services, such as maintenance, storage, ground and flight instruction, etc., to the public. FAA Order 5190.6B at fn. 45 and definition in Appx. Z.



due on April 4, 2018.<sup>2</sup> On June 15, 2018 Arlet filed an answer, “Motion in Opposition to Respondents Motion to Dismiss and Request for Leave to Amend the Complaint,” to the motion to dismiss.<sup>3</sup> (FAA Exhibit 1, Item 9.)

On July 10, 2018, the Ports Authority filed a reply to Arlet’s answer. (FAA Exhibit 1, Item 11.)

The Director may issue an order disposing of the motion up to 30 days after the date an answer to a motion to dismiss is due. (14 CFR §16.26(b)(4).)<sup>4</sup>

#### B. History.

Arlet claims Million Air occupied a hangar and exercised commercial privileges at the Isla Grande airport without a contract or authorization. Arlet further claims the Ports Authority allowed Million Air the commercial privilege to supply and distribute aviation fuel to two other airports owned by the Ports Authority. Arlet alleges this commercial privilege has since been transferred to the Ceiba airport – again without the benefit of an agreement, permit, or contract. (FAA Exhibit 1, Item 1.)

After the Complaint was filed, the Ports Authority and Million Air entered into an agreement on December 15, 2017, allowing Million Air to lease property and provide services (directly or through providers) at both the Ceiba and the Isla Grande airports. (FAA Exhibit 1, Item 6.)

#### IV. STANDARD OF REVIEW OF MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT

Under 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant bears the burden of proof to show noncompliance with a statute, regulation, order, agreement, or document of conveyance. (14 CFR § 16.23(k)(1).) The proponent of a motion (including a motion to dismiss or for summary judgment), request, or order has the burden of proof. (14 CFR § 16.23(k)(2).) Under 14 CFR § 16.26(a), a respondent may file, in lieu of an answer to a complaint, a motion to dismiss the complaint or a motion for summary judgment on the complaint.

A motion to dismiss a complaint must state the reasons for seeking dismissal of either the entire complaint or of specified claims in the complaint. To prevail, the movant must show either (1) the complaint, on its face, is outside the FAA's jurisdiction; (2) the complaint, on its face, does not state a claim that warrants an investigation or further the FAA action; or (3) complainant

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<sup>2</sup> An additional five days was added because the motion was served by mail. 14 C.F.R. §16.17(c).

<sup>3</sup> Arlet claims that it was not served with the motion to dismiss and only discovered it on May 11, 2018, pursuant to a public records request. (FAA Exhibit 1, Item 7.) Arlet was granted an extension until June 15, 2018 to file its answer to the motion to dismiss. (FAA Exhibit 1, Item 8.)

<sup>4</sup> The Director issued a Notice of Extension extending the period for the Order to August 31, 2018. (FAA Exhibit 1, Item 12.)

lacks standing, under 14 CFR §§ 16.3 and 16.23, to file a complaint. (14 CFR §16.26(b).) The movant should file a supporting memorandum of points and authorities. (14 CFR §16.26(b)(2).) The movant has the burden of proof. (14 CFR §16.23(k)(2).)

## V. ANALYSIS

The complaint is dismissed due to Arlet's lack of standing and mootness. Arlet's motion to amend its complaint is denied for failure to follow pre-complaint resolution requirements with respect to the new claims stated.

### A. Grant Assurance 22, *Economic Nondiscrimination*

In its complaint, opposition to the motion to dismiss, and proffered amended complaint, Arlet alleges the Ports Authority violated Grant Assurance 22(c), *Economic Nondiscrimination*, when it failed to uniformly enforce its rules, regulations, rates, fees and tariffs on all FBOs. Specifically, Arlet alleges the Ports Authority allowed Million Air to conduct commercial operations at Isla Grande without an agreement (FAA Exhibit 1, Item 1, pp. 9-10) and failed to collect penalties and reasonable rents, and allowed illegal rent subsidies. (FAA Exhibit 1, Item 9, pp. 16-18.) Arlet also alleges the Ports Authority violated Grant Assurance 22(d), *Economic Nondiscrimination*, when it allowed Million Air to use the Common Traffic Advisory Frequency (CTAF) and the "Private Aviation Guide" to mislead air carriers. (FAA Exhibit 1, Item 1, p. 10; FAA Exhibit 1, Item 9, p. 18.)

Federal Grant Assurance 22, *Economic Nondiscrimination*, deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a means for limiting access. Grant Assurance 22 implements the provisions of 49 U.S.C. §§ 47107(a) (1) through (3). Grant Assurance 22(a) provides:

(The airport owner or sponsor) will make the airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

Federal Grant Assurance 22(c) provides:

Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

Federal Grant Assurance 22(d) provides:

Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

FAA Order 5190.6B, *FAA Airport Compliance Handbook*, September 30, 2009, describes the responsibilities assumed by the owners or sponsor of public use airports developed with Federal



assistance under Grant Assurance 22. Among these is the obligation to treat those users making the same or similar use of the airport in a uniform manner and to make all airport facilities and services available on reasonable terms without unjust discrimination. (FAA Order 5190.6B, Chapter 9.) The owner of an airport developed with Federal assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activities on reasonable terms and without unjust discrimination. (FAA Order 5190.6B, 9.1.a.)

#### B. Disregard of Untranslated Exhibits:

Arlet supports several of its claims and allegations with Spanish exhibits attached to its Complaint and proffered Amended Complaint. Nine out of eighteen exhibits are in Spanish. Paragraphs 1, 9, 13, 14, and 15 of the Complaint all refer to Spanish exhibits. (FAA Exhibit 1, Item 1.) Further, Exhibit J to the motion in opposition to the motion to dismiss and leave to file an amended complaint is labeled “Contrato Arlet Aviation LLC,” and is in Spanish. (FAA Exhibit 1, Item 9, Exhibit J.)

The FAA, in its Supplemental Docketing Notice, required that all exhibits be translated fully and accurately to English. In response to the Supplemental Docketing Notice and the Ports Authority’s allegations, Arlet states, “Arlet translated the parts of the regulations, memorandum or contracts that it relied upon to file this complaint within the body of the original and the amended complaint. While it would be possible to translate all the documents into English it is a costly and burdensome proposition for a case where Arlet does not seek monetary damages . . . Respondent is the author of the exhibits it now argues should not be considered. Respondent has extensive resources and a bilingual legal team.” (FAA Exhibit 1, Item 9, p. 3-4.) In this response, Arlet assumes that the parts of the exhibits it translated will be the same parts that may be significant or relevant to the Director. The Director disagrees and finds that Arlet has failed to comply with the requirements of the Supplemental Docketing Notice by its failure to translate the material provisions of the exhibits into English.

In accordance with the Supplemental Notice of Docketing, the paragraphs referencing untranslated exhibits or provision thereof will be disregarded. Therefore, the allegations that Million Air operated at Isla Grande (paragraph 1 of the Complaint), the Circular Memorandum 2015-01 specifying penalties for operating without a permit (paragraph 9 of the Complaint), the Ports Authority’s memorandum favoring Million Air (paragraph 13 of the Complaint), the Ports Authority’s Circular Memorandum 2016-02 requiring a contract or lease for airport users to carry out activities (paragraph 14 of the Complaint), the requested enforcement of certain rules (paragraph 15 of the Complaint), and Arlet Aviation LLC Lease Agreement with amendments and respondents authorization under article 4(B) (Exhibit J of Arlet’s Opposition to the Motion to Dismiss) will not be considered in the Director’s analysis of this case. Consequently, the Director disregards the claims or allegations contained in paragraphs 1, 9, 13, 14, and 15 of the Complaint and on page 2 of Arlet’s Motion in Opposition to Respondents Motion to Dismiss and Request for Leave to Amend the Complaint.<sup>5</sup>

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<sup>5</sup> Arlet’s Motion in Opposition to Respondents Motion to Dismiss and Request for Leave to Amend the Complaint states, “[t]he Amended Complaint includes Arlet’s Lease Agreements and amendments. The applicable parts have



C. Arlet Lacks Standing under 14 CFR 16.23

To bring a complaint under Part 16, a complainant must establish that it is “directly and substantially affected” by the noncompliance it alleges. (14 CFR §16.23(a).) Arlet has failed to satisfy this requirement. In its motion to dismiss, the Ports Authority asserts Arlet lacks standing because it has not alleged or shown it is a tenant at the Isla Grande Airport, where Arlet claims Million Air operated without a contract or authorization. (FAA Exhibit 1, Item 6.) The Ports Authority argues Arlet is not directly and substantially affected by the alleged noncompliance because Arlet lacks authorization to conduct commercial operations at Ceiba. Lastly, the Ports Authority asserts Arlet lacks standing because the claims regarding violations of Puerto Rico regulations involve Puerto Rico law and are not issues within the jurisdiction of the FAA. (FAA Exhibit 1, Item 6, pp. 1-2.)

The complaint fails to adequately describe how Arlet is “directly and substantially affected” by the Ports Authority’s alleged non-compliance with the grant assurances. Arlet argues the Ports Authority failed to collect revenue due from Million Air, but does not explain how this failure constitutes unjust discrimination. (FAA Exhibit 1, Item 9, p.18.) Arlet does not state whether the Ports Authority collects similar revenue from Arlet, but not Million Air. Arlet also alleges the Ports Authority failed to collect penalties from Million Air, but again does not explain how this failure adversely affects Arlet. (FAA Exhibit 1, Item 1, p.10.)

Arlet complains about Million Air’s presence at airports in Puerto Rico but does not describe how the presence directly and substantially affects Arlet. (FAA Exhibit 1, Item 1, p.9.) Arlet contends that by allowing Million Air to provide fuel at Ceiba, the Ports Authority will allow competition to develop where none previously existed. (FAA Exhibit 1, Item 1, p.10; Item 9, p.18, ¶37.) According to Arlet, simply allowing this new competition constitutes unjust economic discrimination. However, FBO operations at public assisted airports cannot be exclusive. (*Asheville Jet, Inc. d/b/a Million Air Asheville v. Asheville Regional Airport Authority; City of Asheville, North Carolina; and Buncombe County*, FAA Docket No. 16-08-02, (October 1, 2009) (Director’s Determination).) This negates any argument that the new competition alone constitutes unjust economic discrimination.

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been translated in the Amended Complaint ¶17, 18 and the agreements are attached as Exhibit K.” (FAA Exhibit 1, Item 9, p.2.) However, the agreement appears to be attached as Exhibit J, not as Exhibit K. Only the last 4 pages of the exhibit have English translations, and those pages appear to require Arlet to comply with Grant Assurance 22 to not unjustly discriminate against airport users in setting its prices. Further, paragraphs 17 and 18 of the Amended Complaint do not provide translations to portions of the Arlet/the Ports Authority agreement. Arlet’s proffered Amended Complaint contains limited translations of the Million Air/the Ports Authority lease (FAA Exhibit 1, Item 9, Amended Complaint p.5, ¶3 and p.6, ¶5), and the Circular Memorandum 2015-01. (FAA Exhibit 1, Item 9, Amended Complaint p.9, ¶15.) These translations fall short of the requirements of the Supplemental Notice of Docketing.



Arlet alleges that Million Air lacks a fuel permit at Ceiba. (FAA Exhibit 1, Item 1, pp. 5-6, ¶¶3-8.) However, Arlet does not explain how this failure is discriminatory. The Ports Authority contends Arlet lacks a fuel permit to operate at Ceiba. (FAA Exhibit 1, Item 11, p.1, ¶5.) In response, Arlet offers an email from the Ports Authority which states, “according to Environmental Affairs communication, you already comply with everything to start fuel operation.” (FAA Exhibit 1, Item 9, p. 11.) However, such a statement does not infer the Ports Authority is unjustly economically discriminating against Arlet.

An unjust economic discrimination claim under Grant Assurance 22 requires a description of the alleged preferential treatment of another party, how the other party is similarly situated, and that the complainant requested similar treatment and was denied. (*BMI Salvage Corporation & Blueside Services, Inc. v. Miami-Dade County, Florida*, FAA Docket No. 16-05-16, (July 25, 2006) (Director’s Determination), p. 12.) In its Complaint, Arlet fails to show how it is similarly situated to Million Air (the two FBOs operate at different airports) or that it requested and was denied similar treatment to operate without a contract or a fuel permit. Arlet thus fails to satisfy several basic requirements of an unjust economic discrimination claim and fails to show it was directly and substantially affected by a violation of Assurance 22.

Arlet also contends Puerto Rico Regulation 2923 requires Million Air to have a contract to operate at Isla Grande and the regulation was violated when Million Air operated without a contract. (FAA Exhibit 1, Item 1, Exhibit C, pp. 87-171.) However, Grant Assurance 22 does not require the Ports Authority to comply with a local regulation that required a lease between itself and Million Air. The issue of whether the Ports Authority complied with regulations in allowing Million Air to operate without a lease is a state law matter and is not within the jurisdiction of the FAA. The Director analyzes the Complaint only to determine grant assurance compliance. Disputes regarding contracts or local government regulations are generally a matter of state law and not covered under the Part 16 process. (*Signature Flight Support Corp. v. County of Orange*, FAA Docket No. 16-17-02, (July 21, 2017) (Director’s Determination).)

Further, Grant Assurance 22 does not require a sponsor to adhere to any particular methodology for letting or assigning leases. The airport sponsor has discretion to use practices that best suit its individual needs. The FAA does not normally intervene in the business decisions of the airport sponsors where grant assurance violations are not at issue. (*Jet 1 Center Inc. v. Naples Airport Authority*, FAA Docket No. 16-4-03, (January 4, 2005) (Director’s Determination), p. 25; *Self Serve Pumps, Inc. v. Chicago Executive*; FAA Docket No. 16-07-02, (March 17, 2008) (Director’s Determination), p. 25. Rather, the FAA enforces contracts between an airport sponsor and the federal government. (*Signature Flight Support Corp. v. County of Orange*, FAA Docket No. 16-17-02, (July 21, 2017) (Director’s Determination); *See also AmAv v. Maryland Aviation Administration*, FAA Docket No. 16-05-12, (March 20, 2006) (Director’s Determination).)

For the foregoing reasons, the Director finds Arlet lacks standing under 14 CFR §16.23(a) because it failed to state or show how it is directly and substantially affected by the Port Authority’s alleged noncompliance with Grant Assurance 22.

D. The Contract Claims are Moot.



Arlet alleges the Ports Authority did not have a contract with Million Air but allowed it to operate at Isla Grande and Ceiba, contrary to Puerto Rico regulations. (FAA Exhibit 1, Item 1, p.5.) Arlet further claims that the Ports Authority's failure to penalize Million Air for having a fueling operation without a permit was discriminatory. However, these allegations are no longer outstanding as a result of the contract entered between the Ports Authority and Million Air dated December 15, 2017. The new contract contains lease provisions as well as fueling authorizations for Million Air at Isla Grande and Ceiba. (FAA Exhibit 1, Item 6, Exhibit 1.)

The FAA's focus in the Part 16 process is on compliance prospectively rather than "punitive measures for past violations." (*Steere v. County of San Diego*, FAA Docket No. 16-99-15, (December 7, 2004) (Final Decision and Order), pp. 25-26.) In addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is *currently* in compliance with the applicable Federal obligations. Consequently, the FAA may consider the successful action by the airport to cure any alleged or potential past violation of applicable Federal obligation to be grounds for dismissal of such allegations. (*See Skydive Myrtle Beach, Inc. v. Harry County Department of Airports, South Carolina*, FAA Docket No. 16-14-05, (October 7, 2015) (Director's Determination); *RDM LLC v Ted Stevens Anchorage International Airport*, FAA Docket No. 16-09-14, (June 7, 2011) (Director's Determination); *See e.g. Wilson Air Center v. Memphis and Shelby County Airport Authority*, FAA Docket No. 16-99-10, (August 30, 2001) (Final Decision and Order).)

The FAA reviews current compliance with Federal obligations. The FAA may conclude past noncompliance issues are moot as a result of an airport sponsor correcting a wrong (*Vortex Aviation Services, LLC v. Jackson Hole Airport Board*, FAA Docket No. 16-00-18, (June 21, 2001) (Director's Determination), p. 16). Therefore, even assuming the absence of a contract or agreement between the Ports Authority and Million Air was discriminatory and constituted a violation of Grant Assurance 22, it has been mooted by the new agreement. The Director finds the dispute is now moot with respect to those claims.

#### E. Arlet's Motion to Amend Complaint.

Title 14 CFR §16.23(j) states, "Amendments or supplements to the pleadings described in this section will not be allowed without showing good cause through a motion and supporting documents." Arlet alleges that in light of new evidence, it has good cause to amend its original complaint in accordance with 14 CFR § 16.23(j). Arlet tendered an Amended Complaint with additional exhibits. (FAA Exhibit 1, Item 9.)

Arlet claims in its motion to amend that the Ports Authority gave Million Air credits of \$328,500 (towards an existing debt) and \$1,432,428.30 (representing the first 10 years of rent to offset an investment made in hangar H-1) in the December 15, 2017 agreements. Further, Arlet claims the Ports Authority billed Million Air a total of \$283,008.56 from 2015-2018 when it should have billed \$270,085.80 per year. (FAA Exhibit 1, Item 7, pp.16-18.) Arlet claims these actions constitute illegal rent subsidies. Arlet's proffered amended complaint Count I concludes this placed Million Air in an economically privileged position to the detriment of Arlet thereby violating Grant Assurance 22(c), *Economic Nondiscrimination*. (FAA Exhibit 1, Item 9.)

In Count II, Arlet claims the Ports Authority's use of the Common Traffic Advisory Frequency



(CTAF) and the “Private Aviation Guide” misled and impeded operators from using Arlet in violation of Grant Assurance 22(d), *Economic Nondiscrimination*. (FAA Exhibit 1, Item 9.)

Count III alleges a violation of Grant Assurance 25, *Airport Revenue*, when PRPC allegedly failed to collect rent from a nonaeronautical tenant and when it gave credits to Million Air totaling \$1,760,928.30 as illegal subsidies. (FAA Exhibit 1, Item 9.)

The new claims raised in the proffered amended complaint are so factually different and legally distinct from the original complaint that it completely changes the nature of the complaint. Prior to seeking leave to amend its complaint, Arlet alleged that the *absence* of a contract between the Ports Authority and Million Air was discriminatory because Arlet was required to operate under a contract. Now that the Ports Authority and Million Air have a contract, Arlet seeks to allege that subsidies and free rent place Million Air in a position of economic superiority, and the Ports Authority is not receiving the airport revenues it should. The latter allegations in the proffered amended complaint were not part of the pre-complaint resolution letter offered to prove compliance with 14 CFR §16.21(a). (FAA Exhibit 1, Item 1, Exhibit B.) Arlet has not certified in accordance with 14 CFR §16.21(b) and (c) that it has made a substantial and reasonable good faith effort to resolve the issues of rent subsidies and forbearance prior to seeking leave to file the amended complaint. (FAA Exhibit 1, Item 1.)

Amendments to complaints may be allowed where the amendments are related to the original complaint. For example, amendments were allowed to provide an update on facts occurring subsequent to the date of the initial complaint and additional arguments to support the complainant’s alleged violations. *Boca Airport, Inc., v. Boca Raton Airport Authority*, FAA Docket No 16-00-10, (April 26, 2001) (Director’s Determination), p.7.) In this case, few allegations refer to or update the facts of the original complaint. Rather, the new allegations are aimed at violations resulting from the December 15, 2017 lease. The new Grant Assurance 22 alleged violations are a result of reduced rents and subsidies that were not present in the original complaint. The allegation of a Grant Assurance 25, *Airport Revenues* violation is new and results from the December 25, 2017 lease. The Director finds the amended complaint amounts to the commencement of a new proceeding and does not relate back so as to avoid the regulatory provision of 14 CFR §16.21.<sup>6</sup>

Accordingly, the new claims stated in the amended complaint must satisfy the pre-complaint resolution requirements of 14 CFR §16.21. They do not. The amended complaint does not certify that Arlet (1) made substantial and reasonable good faith efforts to resolve the disputed matter

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<sup>6</sup> Notwithstanding that the Federal Rules of Civil Procedure (FRCP) are not controlling in FAA Part 16 cases, FRCP Rule 15, *Amended and Supplemental Pleadings* provides some guidance. Amendments are not allowed when the amendment asserts a claim that did not arise out of the conduct, transaction, or occurrence set out in the original complaint. (FRCP 15(c)(1)(B).) Such motions are denied when the amendment would amount to the commencement of a new proceeding and would not relate back in time so as to avoid the statutory provision. (Citing, *Cohn v. Federal Security Adm.*, 199 F.Supp. 884, 885 (W.D.N.Y. 1961).)

informally prior to proffering its amended complaint; and (2) there is no reasonable prospect for practical and timely resolution of the dispute. Arlet's motion to amend its complaint did not include a brief description of its efforts to obtain informal resolution. Its efforts to resolve informally were not demonstrated by pertinent documentation. Arlet failed to meet the requirements of 14 CFR § 16.21 to resolve informally the newly alleged violations of Grant Assurances 22(c) and (d), *Economic Nondiscrimination*, or Grant Assurance 25, *Airport Revenue*.

For the foregoing reasons, the Director finds the proffered Amended Complaint must meet the pre-complaint resolution requirements of 14 CFR §16.21. The Director further finds that the proffered Amended Complaint fails to meet the pre-complaint resolution requirements of 14 CFR §16.21. Accordingly, the Director denies the Request for Leave to Amend Complaint.

## VI. FINDINGS AND CONCLUSION

After consideration of the pleadings and record, and viewing the Complaint in the light most favorable to Arlet, the Director finds Arlet lacks standing to proceed with its complaint alleging violations of Grant Assurance 22 for the reasons explained above.

The Director finds that Arlet did not comply with the pre-complaint resolution requirement prior to seeking leave to file its amended complaint.

The Director finds that the December 15, 2017 agreement between the Ports Authority and Million Air moots the claims of unjust economic discrimination.

The Director finds that there are no claims that warrant further action by this office, and that the Complaint should be dismissed in its entirety as a matter of law.

## ORDER

ACCORDINGLY, it is ordered that:

1. The Ports Authority's Motion to Dismiss is GRANTED; and
2. The Complaint is DISMISSED with prejudice;
3. Arlet's Motion to Amend its Complaint is DENIED<sup>7</sup>, and
4. All other Motions are denied.

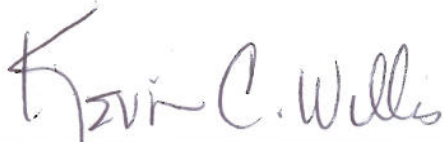
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<sup>7</sup> This denial is not with prejudice and does not preclude Arlet from filing a new complaint that complies with the Part 16 process including, but not limited to, pre-complaint resolution requirements.




## RIGHT OF APPEAL

This Order of the Director is an initial agency determination and does not constitute final agency action and order subject to judicial review. 14 CFR §16.247(b)(2.) A party to this proceeding adversely affected by the Director's Order may appeal the initial determination to the FAA's Associate Administrator for Airports under 14 CFR §16.33(c) within 30 days after service of the Director's Order.



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Kevin C. Willis  
Director, Office of Airport Compliance  
and Management Analysis



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Date

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

Arlet Aviation LLC,

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v.

Puerto Rico Ports Authority,

Respondent.

FAA Docket No. 16-17-17

FAA EXHIBIT 1

INDEX OF ADMINISTRATIVE RECORD

Item 1 – Part 16 Complainant dated November 16, 2017, includes exhibits A-I.

Exhibit A– Arlet Aviation's letter to Respondent of December 2016 including ten (10) Exhibits.

Exhibit 1 – Million Air Facility on The South Ramp of Fernando Ribas Dominicci Airport (the Isla Grande airport)

Exhibit 2 – Million Air Facilities on The North Ramp of Fernando Ribas Dominicci Airport (the Isla Grande airport)

Exhibit 3 – Million Air Facility at Jose Aponte De La Torre Airport (TJRV)

Exhibit 4 – PR State Department Records for Million Air and Affiliated Entities. (Spanish)

Exhibit 5 – Caribbean Flight Training Center Expired Lease Agreement Puerto Rico Ports Authority Contract No. AP-00-01-(4)-085. (Spanish)

Exhibit 6 – Caribbean Flight Training Center Expired Lease Agreement (Amended) Puerto Rico Ports Authority Contract No. AP-00-01-(4)-085. (Spanish)

Exhibit 7 – Puerto Rico Ports Authority Circular Memorandum No. 2015-01. (Spanish)

Exhibit 8 – Caribbean Business Entrepreneurs Supplement of October 8, 2015.

Exhibit 9 – Puerto Rico Ports Authority Contracts Division Certifications. (Spanish)

Exhibit 10 – Caribbean Flight Training Center Corporate Records Puerto Rico State Department.

Exhibit B – Pre-Complaint Resolution letter.

Exhibit C – Million Air Fuel Permit.



Exhibit D – Puerto Rico Ports Authority Regulation 2923. (Spanish)  
Exhibit E – Puerto Rico Ports Authority Facilities Lease and Use Policy Regulation 8891.  
Exhibit F – Circular Memorandum 2016-02. (Spanish)  
Exhibit G – Respondents Memorandum regarding maintenance operations at Jose Aponte de la Torre Airport. (Spanish)  
Exhibit H – Notice of Closure Diego Jimenez Airport.  
Exhibit I – Private Aviation Guide of July 2016.

Item 2 – Notice of Docketing, December 11, 2017.

Item 3 – Supplemental Notice of Docketing – Translation of Spanish, December 18, 2017.

Item 4 – the Ports Authority’s Request for Clarification of Deadline and, in the alternative, Request for Extension of Time, January 2, 2018.

Item 5 – the Ports Authority’s Request for Clarification of Deadline and, in the alternative, Request for Extension of Time, January 17, 2018.

Item 6 – the Ports Authority’s Motion to Dismiss, Received March 20, 2018.

Exhibit 1 – Contract dated December 15, 2017, between the Ports Authority and Million Air.

Exhibit 2 – Agreement dated December 15, 2017, between the Ports Authority and Million Air.

Item 7 – Arlet’s Motion dated May 16, 2018, to extend time to answer Motion to Dismiss.

Item 8 – Order dated \_\_\_\_\_ extending time for Arlet to answer Motion to Dismiss.

Item 9 – Arlet’s Motion in Opposition to Respondents Motion to Dismiss and Request for Leave to Amend the Complaint, dated June 15, 2018.

Exhibit J – Arlet Aviation LLC Lease Agreement with amendments and respondent’s authorization under article 4(B). (Spanish)

Exhibit K – Million Air Billing History.

Exhibit L – Downwind Yacht Sales Web and Facebook Page.

Item 10 - the Ports Authority’s Motion for Leave and Extension of Time to File Reply, dated June 26, 2018.

Item 11 - the Ports Authority’s Reply to Motion in Opposition to Respondents’ Motion to Dismiss and Request for Leave to Amend the Complaint, dated July 10, 2018.

Item 12 – Director’s Notice of Extension of Time dated July 25, 2018.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 24, 2018, I caused to be placed with Federal Express, e-mailed, or personally delivered a true copy of the foregoing ORDER addressed to:

Complainant:

Iván G Rosado, Esq.  
Rosado-Alfonso Law Office, PSC  
PO Box 195015  
San Juan PR 00919-5015  
Tel: (787) 641-0286  
Fax: (787) 641-0287  
[irosado@rosado-alfonsolaw.com](mailto:irosado@rosado-alfonsolaw.com)


Respondent:

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