UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

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Issued by the Department of Transportation
on the 3rd day of April, 1995

AIR TRANSPORT ASSOCIATION OF AMERICA, et al., v. CITY OF LOS ANGELES, CITY OF LOS ANGELES DEPARTMENT OF AIRPORTS, and LOS ANGELES BOARD OF AIRPORT COMMISSIONERS	Docket 50176
LOS ANGELES INTERNATIONAL AIRPORT RATES PROCEEDING	Docket 50176

INSTITUTING ORDER

The Department of Transportation, pursuant to 49 U.S.C. 47129(c)(2), has determined that a significant dispute exists regarding the amended complaint filed on March 2, 1995, by the Air Transport Association of America (ATA) and sixteen airlines against the City of Los Angeles, the City of Los Angeles Department of Airports, and the Los Angeles Board of Airport Commissioners (collectively the City), and thus the matter is assigned to an administrative law judge (ALJ) for an oral evidentiary hearing. The ALJ is directed to issue a recommended decision by June 1, 1995.

Introduction

On March 2, 1995, ATA and sixteen airlines, Air Canada, Air New Zealand, Alaska Airlines, American Airlines, American Trans Air, America West Airlines, Continental Airlines, Delta Air Lines, KLM Royal Dutch Airlines, Mexicana

Airlines, Southwest Airlines, Trans World Airlines, United Airlines, United Parcel Service, USAir, and Varig Brazilian Airlines (collectively the Complainants), filed an amended complaint pursuant to Order 95-1-42 (January 26, 1995) with the Department of Transportation against the City. The complaint asks us to determine whether the increased landing fees charged at Los Angeles International Airport (LAX) are unreasonable and otherwise unlawful under 49 U.S.C. 47107, 49 U.S.C. 40116, and section 113 of the Federal Aviation Administration Authorization Act of 1994, P.L. 103-305 (August 23, 1994) (the Authorization Act), codified as 49 U.S.C. 47129. The complaint further requests that we accept the complaint and determine the lawfulness of the fees under the expedited procedures of section 113 of the Authorization Act and our regulations, 14 C.F.R. Part 302, Subpart F, adopted at 60 Fed. Reg. 6919 (February 3, 1995).

A number of other airlines, listed below, filed complaints against the City on or after March 9 (the follow-on complaints).

In its answer the City of Los Angeles argues that its fees are reasonable, that the new statutory procedures do not apply to the issue of the reasonableness of the fees at LAX, and that we should in any event dismiss all of the complainants except the U.S. airlines included among the Complainants.

We have reviewed the amended complaint, the City's answer, and the Complainants' reply, as well as the other pleadings filed in this matter, and determined that a significant dispute exists within the meaning of section 113. Accordingly, the amended complaint will be referred to an administrative law judge for hearing under the terms of the statute. After carefully considering the City's arguments that the dispute over the fees at LAX is outside the scope of the statute, we have concluded that the dispute is covered by the statute. We will also allow foreign carriers and carriers filing timely follow-on complaints to participate in the case as complainants. However, we are granting the City's request for a ruling that no letter of credit is required from the City in this proceeding.

The administrative law judge's recommended decision will be due no later than June 1. We have determined that we will review the judge's decision. Accordingly the parties should submit briefs and reply briefs, as set forth below, rather than petitions for review, after the decision is issued.

A. Statutory Background

The Authorization Act, signed into law on August 23, 1994, includes in section 113 specific provisions for the resolution of airport-airline disputes over airport fees. Before the enactment of section 113, an airline could seek an investigation into the lawfulness of any airport fee under the enforcement procedures adopted

by the Federal Aviation Administration (FAA). Those rules, however, required no set deadline for a final decision by the FAA.

To provide airlines and airport operators with an opportunity to obtain a prompt decision on significant disputes about the lawfulness of new fees and increased fees, Congress enacted Section 113 of the Authorization Act. That section requires the Secretary to determine the reasonableness of a challenged fee within 120 days after the complaint is filed.[1] Although the statute created new procedures for examining the reasonableness of new or increased airport fees, it did not change the substantive rights and duties of the airports or the airlines. As we said in adopting the procedural regulations under this statute, "The new procedures replace existing procedures under 14 CFR Part 13, and impose no new substantive requirements on either carriers or airports." 60 Fed. Reg. 6919, 6927 (February 3, 1995). See also 59 Fed. Reg. 53380, 53386 (October 24, 1994).

Under the new statute, an air carrier may file a complaint against a new or increased fee (or fee in dispute on the date of enactment) within 60 days of the carrier's receipt of notice of the fee's imposition. Within 30 days of the complaint's filing, we must determine whether "a significant dispute" exists over the fee's reasonableness. If we find that such a dispute exists, we must set the case for hearing before an administrative law judge (ALJ). If we find that no such dispute exists, we must dismiss the complaint. If the case is set for hearing, the ALJ must issue a recommended decision within 60 days. We must issue our final decision on the reasonableness of the fee within 120 days of the filing of the complaint; if we fail to do so, the ALJ's decision becomes the Department's final decision.

In examining fee increases within this statute, we may determine whether the new fee is reasonable, but we may not prescribe a fee. 49 U.S.C. 47129(a)(3).

While the complaint is pending, the carriers must pay the new fee, albeit under protest, and the airport may not block the airlines from using the airport. Unless the airport and the air carriers agree otherwise, the airport must obtain a bond, letter of credit, or other credit facility that is sufficient to cover the amount in dispute that is due during the 120-day period the Department has to decide the matter. The airlines are entitled to a refund or credit if we ultimately determine that the new fee is unreasonable. 49 U.S.C. 47129(d).

The section 113 administrative dispute resolution procedure has the following limitations:

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[1] The Secretary has delegated his authority under 49 U.S.C. 47129 to the Assistant Secretary for Aviation and International Affairs. 49 C.F.R. 1.56a, as amended by 60 Fed. Reg. 11046 (March 1, 1995).

(e) Applicability -- This section does not apply to-

(1) a fee imposed pursuant to a written agreement with air carriers using the facilities of an airport;
(2) a fee imposed pursuant to a financing agreement or covenant entered into prior to the date of the enactment of this section; or
(3) any other existing fee not in dispute as of such date of enactment.

(f) Effect on Existing Agreements – Nothing in this section shall adversely affect–

(1) the rights of any party under any existing written agreement between an air carrier and the owner or operator of an airport; or
(2) the ability of an airport to meet its obligations under a financing agreement, or covenant, that is in force as of the date of the enactment of this section.

Pursuant to the requirements of section 113 of the Authorization Act, the Department adopted Rules of Practice for Proceedings Concerning Airport Fees, Subpart F, 14 C.F.R. Part 302. 60 Fed. Reg. 6919 (February 3, 1995). Those rules as well as Subpart A of the Department's Rules of Practice, 14 C.F.R. Subpart A, will govern the conduct of this proceeding.

The Authorization Act also required the Department to issue standards or guidelines that shall be used to determine whether airport fees are reasonable. In response to this statutory mandate, the Department issued its Policy Regarding Airport Rates and Charges, 60 Fed. Reg. 6909, on February 3, 1995 (the Policy Statement).

There are limitations imposed by federal law on an airport's operations and fees. When an airport accepts federal grant money for an airport improvement, it must give certain assurances, including the assurance that the airport will be available for public use on fair and reasonable terms and without unjust discrimination. This requirement was contained in section 511 of the Airports and Airways Improvement Act of 1982, now recodified as 49 U.S.C. 47107.[2] Section 511 also provides, with some exceptions, that all revenues generated by a public airport, and any local taxes on aviation fuel, will be expended for the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport that directly and substantially relate to the air transportation of passengers or property. In addition, section 1113(b) of the Federal Aviation Act, the Anti-Head Tax Act, recodified as 49 U.S.C. 40116,

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[2] The Complainants allege that from 1973 to 1993 the City entered into federal grant agreements enabling it to obtain $300 million in federal funds and that it received over $175 million of this amount by September 1993. Amended Complaint at 8, citing Exhibit ATA-1.

allows the local airport authority to collect only reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities. See Northwest Airlines v. County of Kent, 114 S. Ct. 855 (1994).

B. Factual Background

The dispute between the City and the airlines began on July 1, 1993, when the City increased the landing fees at LAX from $0.51 per thousand pounds of aircraft weight to $1.56 for some aircraft and $1.87 for other aircraft.[3] Many of the airlines serving that airport claim that the new fees are unreasonably high and that the City intends to use the revenues for non-airport purposes, as allegedly shown by the evidence submitted by the Complainants. The City, on the other hand, alleges that it increased the fees because the expiration of the airlines' longterm leases gave the City the opportunity to reassess its fee structure. The City decided to switch from the residual fee methodology used earlier, which assertedly caused the airlines to be subsidized by the airport's other revenues, to a compensatory fee methodology. Answer at 4-6. The City claims that the new fees are reasonable.

After the City announced the fee increase, the airlines filed a district court suit asking that the fees be invalidated on the grounds that the fees violated the Anti-Head Tax Act and other laws because they were unreasonable and discriminatory. The court dismissed the suit because the airlines did not have a private right of action to challenge the reasonableness of the fees. The Court reasoned that the Secretary, not the courts, was responsible for resolving reasonableness issues. Air Transport Ass'n v. City of Los Angeles, 844 F. Supp. 550 (C.D. Calif. 1994). The airline plaintiffs initially appealed the decision to the Ninth Circuit but later withdrew that appeal. Amended Complaint at 40-41, 44.

After the airlines refused to pay the new fees, the City told them that it would bar carriers refusing to pay the new fees from using the airport. The airlines were unable to obtain an injunction against the City's implementation of this threat. As a result, the airlines accepted a standstill agreement with the City that was effective December 1, 1993 (exhibit ATA-45 is a copy of this agreement). The airlines agreed to pay the new fees under protest, and the City agreed to refund with interest any part of the fees ultimately found unlawful. The agreement preserved the airlines' right to seek a determination of the lawfulness of the fees. Amended Complaint at 41-43.

Several months later, Congress enacted section 113 of the Authorization Act, the source of the expedited procedures for investigating the reasonableness of

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[3] According to the City, the landing fees in the 1992-1993 fiscal year were unusually low due to a $16 million carry-over from the preceding fiscal year. Without the carry-over, the fee would have been $0.84 per landing fee unit. Answer at 6.

significant disputes over airport fee increases. ATA and the sixteen airlines filed a complaint with us under the new statute on October 21, 1994. Since we had not adopted procedural rules or standards for determining reasonableness, the Complainants asked us to defer acting on the complaint until the rules were adopted. Complaint at 3-4. They also asked that action be deferred because they had not been able to obtain additional budget and accounting information they had requested from the City. The airlines asked us to compel the airport to provide the relevant information. Complaint at 3-4.

In its response, the City argued that the complaint did not come within the scope of the new statute. However, the City also stated that the airlines had the right to obtain a Secretarial decision on the lawfulness of the new fees even if the new statutory procedure did not apply and that the Secretary could adopt for such a proceeding the same procedures created by the new statute. Response at 2-3.

We issued an order, Order 95-1-42 (January 26, 1995), signed by Stephen Kaplan, the General Counsel, that accepted the airlines' complaint and allowed the airlines to file an amended complaint within thirty days of our adoption of final procedural rules. Id. at 4. We decided that no bond would be required from the City until after the airlines filed their amended complaint. Id. at 4-5. With respect to the airlines' request for additional data from the City, we noted that the procedural rules would address the issue. We further stated that, "in the meantime," we asked the City to provide the complainants "as soon as practicable, any requested information that is relevant to the 1993 fee increase." Id. at 5.

We assured the City that its arguments respecting the applicability of the new statute, ATA's participation, and the applicability of the bond requirement would be addressed "in connection with the disposition of any amended complaint filed pursuant to this order." Order 95-1-42 at 5.

The City then filed an appeal to the Secretary of that order. The City argued that the new statute could not govern a determination of the reasonableness of its fees. The City claimed that the dismissal would be without prejudice to any preexisting rights the airlines might have, including the right to file a complaint under 14 C.F.R. 13.5. In response, the Complainants argued that the Secretary should not accept the appeal and, if the appeal was accepted, that he should reject the City's arguments.

On March 1 we issued a notice stating that we would consider the City's jurisdictional arguments after the Complainants filed an amended complaint. As we pointed out, we could not institute a proceeding under the new statute on the basis of an amended complaint until we ruled on the City's arguments.[4]

C. The Pleadings

1. The Airlines' Amended Complaint

In their amended complaint, filed on March 2, 1995, the Complainants charge that the increased fees at LAX are part of the City's plan to divert airport revenues into its general fund, a charge largely based on earlier statements by City officials and on reports prepared for the City when it was considering changing the landing fees at LAX. The Complainants allege that the City imposed the new landing fees in order to generate surplus revenue which could be "taken downtown." Amended Complaint at 16-40.

The Complainants assert that the new fees at LAX are unreasonable and thus violate the Anti-Head Tax Act, recodified as 49 U.S.C. 40116, and the Airport and Airway Improvement Act, recodified as 49 U.S.C. 47107. Amended Complaint at 46-47. The fees are unreasonable because they are allegedly based on an improper cost allocation methodology and greatly exceed the costs incurred by the City in operating the airfield at LAX. The Complainants estimate that the landing fee should be no higher than $0.55 per 1,000 pounds of aircraft landing weight and that the City's fee of $1.56 produces each year revenues at least $48 million in excess of the airfield's costs. Amended Complaint at 47-48, 59-63.

The Complainants claim that the City's cost methodology is flawed in the following respects:

> (1) The landing fee rate base includes land rental charges for the land under the airfield, $13,147,241, and the apron, $1,714,676, based on the alleged market value of the land; these charges are assertedly improper since they are not based on historic costs. Amended Complaint at 48-50.
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> (2) The rate base improperly includes "amortization" charges of $11,255,938 for capital projects that were included in the rate base in earlier years and have already been paid by the airlines. The City's

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[4] In view of our decision to defer ruling on the City's jurisdictional arguments and to address them only after the filing of an amended complaint, we need not decide whether our rules gave the City the right to appeal the earlier order. We note, however, that the City cited no rule or statute as giving it the right to file the appeal. Since we are considering the City's jurisdictional arguments on the basis of its answer to the amended complaint, we will dismiss its earlier appeal.

methodology will cause the airlines to pay for these projects twice. Amended Complaint at 50-52.

(3) The City has improperly allocated to the airfield cost center $9,678,501 for indirect access center costs (the costs of providing ground access to LAX for vehicles and pedestrians) and $2,367,470 for access center debt service. Amended Complaint at 52-55.

(4) The City has failed to credit the rate base with net aeronautical revenues derived from other general aeronautical revenue sources, such as terminal and cargo area leases, and from airfield revenue sources, such as fuel-flowage fees, and has thereby overstated the rate base by at least $8.4 million annually. Amended Complaint at 55-57.

(5) The City has failed to credit the airfield and apron cost centers with their proportionate share of the interest income earned by the City's Department of Airports; the proper credit should be $4.4 million each year. Amended Complaint at 57-59.

(6) The City has improperly failed to adjust the fees to reflect actual expenses in the 1993-1994 fiscal year and budgeted expenses in the 1994-1995 fiscal year. Amended Complaint at 58-59.

(7) The City is also charging LAX for costs not properly incurred for the airport's operation, such as the cost of a police sub-station at LAX. Amended Complaint at 63-66.

The Complainants ask us to direct the City to cease and desist from imposing the allegedly unlawful fees and to direct the City to refund the portion of the fees found unreasonable for the period beginning July 1, 1993. Amended Complaint at 66-67.

To assist them in presenting their case, the Complainants seek an order directing the City to provide certain information which they have asked the City to produce but which the City has refused to provide. Amended Complaint at 68-69. The Complainants also request us to issue a subpoena for the deposition testimony of Donald A. Miller, a longtime employee of the City's Department of Airports.

The Complainants also ask that we require the City to issue a letter of credit equal to the entire amount in dispute plus interest, which the airlines estimate as $67 million for the period through June 1995. Amended Complaint at 67-68. The Complainants' request for the letter of credit, along with the City's opposition and other pleadings and our decision on this issue, are discussed at the end of this order.

2. The Scheduling Notice

On March 7, we issued a notice advising interested persons of the procedural dates prescribed by our rules, such as the deadline for filing a follow-on complaint and for filing answers to the complaints. We also set deadlines for the filing of intervention petitions and applications for participate under Rule 14 of our Rules of Practice, 14 C.F.R. 302.14.

3. The Follow-on Complaints

On March 9 the following airlines filed follow-on complaints asking for an investigation of the increased fees at LAX: Aero California, Aerolineas Argentines, Aerovias de Mexico, Air France, Alitalia, All Nippon, American International, AOM Minerve, British Airways, Cargolux, Carnival, Cathay Pacific, Challenge, Corse-Air, El Al, EVA, Evergreen, Iberia, Japan Air Lines, Korean, LAN Chile, Lauda, Lufthansa, Malaysia, Martinair, Nippon Cargo, Philippine Airlines, Qantas, Reno, Rich International, Singapore Airlines, Swissair, Target Airways d/b/a Great American Airways, Tower Air, Viking International, Virgin Atlantic, and World. Nippon Cargo later filed a motion to withdraw.

March 9, the seventh day after the filing of the amended complaint, was the deadline for filing additional complaints under our rules. Section 302.603(b). After that date Polar Air Cargo, Emery Worldwide Airlines, ABX Air, Skywest, Markair, AVIANCA, Aviateca, LACSA, Polynesian Airlines, Taca International Airlines, and VASP filed complaints with motions for leave to file after the deadline.

4. The City's Answer and Dismissal Motions

On March 16 the City filed its answer to the complaints and filed several motions. In its answer and accompanying brief, the City argues that its fees are reasonable. The City also contends that the fees may not be investigated under the new statute, since the new statute assertedly changed the substantive law applicable to airport fees and therefore may not be applied retroactively to the City's 1993 change in fees. The City additionally claims that its fees are not subject to the new statute, since the statute by its terms applies only to fees either increased or created after its enactment.

The City asserts in any event that the increased fees are reasonable. In particular, the City contends that its inclusion in the rate base of the market value of the land underlying the airfield and apron is consistent with established economic theory and proper accounting practices. The City seemingly recognizes that its failure to use the land's historic value is inconsistent with the Policy Statement, but the City contends that the Policy Statement cannot be retroactively applied to the LAX fees. Respondents' Brief at 34. As to each of the other challenges made

by the airlines to the fees, the City argues that the challenge is without merit. Respondents' Brief at 31-54. For example, the City argues that the airlines are not entitled to any credit for the interest earned by the City's Department of Airports on its general funds, since those funds do not belong to the airlines and reflect reserves kept by the City for valid reasons. Respondents' Brief at 52-54.

According to the City, if we investigate the fees, we assertedly may only determine whether the fees are reasonable overall, for we may not investigate the individual components of the fee methodology. The City claims that its fees are entitled to deference and must be upheld if they are within the range of reasonableness.

With regard to the Complainants' charge that the City is planning to divert airport revenues off the airport, the City characterizes that charge as a "red herring" designed to divert attention away from the airlines' continuing effort to be subsidized for their use of LAX. Answer at 28. The City represents that its Department of Airports "has not diverted nor does it intend to divert Airport revenue in any unlawful manner." Respondents' Brief at 1.

The City filed separate motions to dismiss ATA as a complainant, to dismiss all of the follow-on complaints, and to dismiss all of the foreign carriers as complainants. On the ground that the statute allows only U.S. carriers to file complaints, the City contends that foreign carriers and the ATA, an airline trade association, are not entitled to seek relief under the statutory provisions. The City contends that the follow-on complaints must be dismissed, since none of them were filed within sixty days of the statute's enactment. The City also moved to dismiss the Board of Airport Commissioners as a respondent on the ground that the Board was not a proper party to litigation involving LAX.

Finally, the City filed a motion objecting to the Complainants' request that the City be required to submit a letter of credit covering the fees.[5]

We issued a notice on March 17 stating that the airlines should file their replies to the City's answer and to the City's motion on the letter of credit issue by March 20 and should file their replies to the dismissal motions by March 22.

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[5] On March 22 the City proposed to the other parties that we should be given an additional twenty-one days to decide whether the complaints should be assigned to an ALJ for hearing. The City made this proposal on the ground that we could have trouble reviewing all of the pleadings in view of the large quantity of material submitted in this case. The March 23 letter of the Complainants' counsel rejected the proposal.

5. The Replies

The Complainants submitted a reply to the City's answer arguing that the City's contentions that the new statutory procedures cannot govern this proceeding and that the LAX fees are reasonable are both wrong. For example, the Complainants claim that the Policy Statement correctly determined that only historical costs could be used for the valuation of the land, since, among other things, almost no other airport uses the market value of its land in its rate base. The Complainants provided additional evidence as well.[6] The carriers filing follow-on complaints also submitted replies.

6. Motions for Intervention

The Airports Council International – North America filed a motion for leave to intervene in this proceeding. No one else filed such a motion or applied to participate under Rule 14 of our Rules of Practice, 14 C.F.R. 302.14.

7. The Airline Responses to the Motions to Dismiss

On March 22 the Complainants filed answers opposing the City's motions to dismiss the foreign carriers and ATA as complainants and the City's motion to dismiss the Los Angeles Board of Airport Commissioners as a respondent. The following airlines also filed replies to one or more of the City's dismissal motions: a group of twelve carriers including Aero California; ABX Air, Markair, and Skywest; Aerovias de Mexico; a group of four foreign carriers including AVIANCA; Alitalia; All Nippon Airways; American International Airways; AOM Minerve; Aviateca; British Airways; Cargolux; Cathay Pacific; Challenge; Corse-Air; Emery; EVA; Korean Airlines; Lauda; Malaysia Airlines; Martinair; Philippine Airlines; Polar Air Cargo; Qantas; Reno Air; Rich International; Taca International Airlines; Target; Tower; Virgin Atlantic; and World.[7]

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[6] Accompanying the Complainants' reply is a motion for leave to file a reply brief in excess of fifty pages, the limit set by 14 C.F.R. 302.31. The motion notes that the City also filed a brief longer than fifty pages. We think that the motion is unnecessary and that the length of the City's brief was permitted by our rules. The rule cited by the Complainants is directed at briefs filed after a tentative decision has been issued and thus appears inapplicable here. In airport rate cases, the parties must present their complete argument at the beginning of the proceeding.

[7] Since Cathay Pacific and American International filed their answers one day late, each moved for leave to file its answer. We will grant the motions, primarily because each carrier served the City by fax on March 22, the due date, and filed the answer early on the following day, March 23.

D. The Department's Decision

After considering all of the parties' submissions, we have determined that the dispute over the LAX fee increases must be sent to an ALJ for a hearing under the new statutory procedures. We will first explain why the complaint is within our jurisdiction under 49 U.S.C. 47129 and why a significant dispute exists. We will then determine who will be the parties to this case by ruling on the City's motions to dismiss ATA, the follow-on complainants, and the foreign carriers as complainants and to dismiss the Los Angeles Board of Airport Commissioners as a respondent, and on the motion to intervene by the Airports Council International – North America. Thereafter we will set forth guidelines on the scope of the issues and on some of the principles that should be considered by the ALJ in analyzing the parties' arguments and evidence. We will also outline procedures to be followed by the ALJ. Finally, we will explain why we find that the City need not submit a letter of credit or other form of financial security in this proceeding.

1. Jurisdiction

The City claims on several grounds that this dispute is not within the terms of the new statute. We have considered its arguments but find them unpersuasive.

First, the City argues that the new statutory procedures cannot apply to its fees because the City has taken no grant money since Congress enacted the new statute. In support of this claim, the City cites several cases where the Supreme Court has held that Congress may not retroactively impose substantive conditions on a state or local government that had accepted grants. Answer at 43, citing, inter alia, Bennett v. New Jersey, 470 U.S. 632 (1985); and Pennhurst State School and Hospital v. Halderman, 451 U.S. 1 (1981).[8]

However, the Supreme Court has held that changes in procedural rules may be applied to preexisting disputes, since such changes do not change the rights and obligations of the parties. Landgraf v. USI Film Products, 114 S. Ct. 1483, 1501 (1994). Here the 1994 legislation did not create or strengthen the City's obligation to charge only reasonable fees, for Los Angeles has long been subject to that obligation. The statute instead created only a procedural mechanism for quickly resolving disputes over the reasonableness of airport fees, as we noted in adopting our procedural rules. See 60 Fed. Reg. at 6927 and 59 Fed. Reg. at 53386.

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[8] While the City's argument is in any event invalid, we note that the argument unduly minimizes the City's ability to receive federal grant money. The City's financial statements show that the City's Department of Airports received $38 million in federal grants in the fiscal year ended June 30, 1994, and that the FAA had agreed to pay an additional $280 million in federal grants for various projects at the airports operated by the City. Exhibit LAX-5 at 13, 16.

In contrast, the cases cited by the City involved changes in a party's rights and duties. The Court held that substantive conditions may not be imposed on a grantee after the grantee had accepted the funds without knowing of the conditions. As the Court stated in Bennett, 470 U.S. at 641, "[A]bsent a clear indication to the contrary in the relevant statutes or legislative history, changes in the substantive standards governing federal grant programs do not alter obligations and liabilities arising under earlier grants." That holding by its terms is irrelevant to the kind of procedural change effected by Congress' enactment of 49 U.S.C. 47129.

In claiming that the new statute has changed its substantive rights in addition to creating new procedures, the City relies on two statutory requirements, one requiring an airport to submit a letter of credit or other form of financial security while we investigate the reasonableness of a fee, the other requiring that the airport refund the portion of a fee found unreasonable by us. In this case, however, these provisions have not increased the City's obligations. First, as explained below, we are finding that the City is not obligated to provide a letter of credit. Secondly, in signing the standstill agreement with the airlines the City has already committed to making refunds if we find that the increased fee is unreasonable. Thus, in its response to the Complainants' original complaint, the City stated, "[T]he complainant air carriers have entered into a contractual agreement with Los Angeles which would entitle them to a refund to the extent that the landing fees at LAX are found to be unlawful in a proceeding before the Secretary of Transportation." Response at 3, n. 2.

In addition, the City's argument wrongly assumes that the new statute, 49 U.S.C. 47129, does not apply to an investigation of the reasonableness of an airport fee under the Anti-Head Tax Act and is concerned only with the enforcement of airport grant agreements. See, e.g., Answer at 41-42. The Anti-Head Tax Act's prohibition against unreasonable fees would apply, of course, even if the City has not accepted new grants from the FAA. We believe that the new statute governs investigations of whether an airport has violated the reasonable fee requirement imposed by both the Anti-Head Tax Act and the Airport and Airway Improvement Act. The terms of 49 U.S.C. 47129 do not limit the statute's scope to complaints that an airport has violated the Airport and Airway Improvement Act, and it would be illogical to read such a limitation into the statute.

Secondly, the City contends that the statute could not apply to the fee increase at LAX, since that increase took effect in July 1993, more than one year before the statute's enactment. Answer at 45, n. 14, and 56-57. The City bases this argument on 49 U.S.C. 47129(a), which states that the new procedures apply when an airline seeks a ruling "within 60 days after such carrier receives written notice of the establishment or increase of such fee." The City, however, ignores the section's specific provisions on its applicability, paragraph (e) of the section. Subparagraph (e)(3) states that the section does not apply to "any other existing

fees not in dispute as of [the] date of enactment." This language states that any fee in dispute on the date of enactment, even if adopted more than sixty days before enactment, would be subject to the new procedures. Since the City's reading of the section would make meaningless the statutory exclusion of fees not already in dispute, its interpretation is unreasonable. In similar circumstances the District of Columbia Circuit has held that all of the relevant clauses on an agency's authority must be read together to determine the scope of the agency's jurisdiction; even though the literal reading of the clause most directly in point would seem to resolve the question by giving the agency narrow authority, that reading must yield to other clauses indicating that Congress in fact intended the agency to have broader authority. Sheridan Kalorama Historical Ass'n v. Christopher, D.C. Cir. No. 93-5313 (decided March 10, 1995), slip op. at 13-14. [9]

Our interpretation, moreover, is consistent with the statute's history. When the Senate was considering the legislation, Senator Feinstein stated that "the airlines would be permitted to file a 120-day administrative proceeding with respect to [the fees currently in dispute at LAX]." 140 Cong. Rec. S6986, S6988 (June 16, 1994). Indeed, because she read the bill as applying to the LAX dispute, she took steps to ensure that the City was exempted from the Senate bill's escrow requirement. Ibid.[10]

Since Congress intended to make the expedited procedures applicable to existing disputes, we believe that the Complainants filed a timely complaint by filing their initial complaint within sixty days of the statute's enactment. Rigidly applying the statute's sixty-day deadline to complaints involving existing fee disputes would deny airlines the ability to obtain the benefits of the new

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[9] According to the City, however, the clause would still make sense under the City's interpretation, because it would allow the filing of complaints as to fees which had been increased or created within the sixty day-period before the statute's enactment. There is no evidence that Congress was interested in creating an expedited method for resolving disputes over fees increased or established within that sixty-day period. We think that Congress meant to give airlines an expedited procedure for resolving all existing fee disputes, even if the fee had been increased or adopted more than sixty days before enactment. As will be shown, the Senate floor debate indicated that the bill would cover the dispute over the LAX fees.

[10] California's other Senator, Senator Boxer, summarily stated that the bill would not retroactively cover the LAX dispute. 140 Cong. Rec. S7030 (June 16, 1994). It seems likely that she meant that the bill would not retroactively invalidate the standstill agreement, not that the airlines would be unable to use the new statutory procedures to obtain a determination on the reasonableness of the LAX fees.

procedures, even though the statute contemplates that it would apply to such disputes.[11] The City accordingly is unreasonably construing the statute when it claims that any complaint about the LAX fees should have been filed within sixty days of the City's adoption of the fees in July 1993, Answer at 57, even though the statute authorizing the filing of complaints was not enacted until another year had passed.

Similarly, we cannot agree with the City's argument that we lost our jurisdiction to consider the complaint under 49 U.S.C. 47129 because we failed to begin and complete a proceeding within 120 days of the filing of the Complainant's original complaint, filed on October 21, 1994. It would be unfair for the carriers to lose their right to a prompt determination of the fees' reasonableness in these circumstances. We did not meet the 120-day deadline because we deferred acting on the complaint until after we had complied with Congress' direction to adopt procedural rules governing proceedings under the new statute. If we had begun a proceeding within thirty days of the filing of the complaint, there would have been no procedural rules governing such matters as the filing of evidence and replies by the City. In view of the short deadlines set by section 113 of the Authorization Act, our usual procedural rules, 14 C.F.R. Part 302, Subpart A, would not establish usable procedures for these expedited procedures, since those rules allow longer periods of time for filings.

Finally, we note that the City's jurisdictional arguments, if valid, could not preclude us from conducting an expedited review of the reasonableness of the increased LAX fees. The City, as shown, has long been barred from charging unreasonable landing fees. When the airlines sought to obtain a judicial judgment on the reasonableness of the increased fees, the City successfully argued that this Department, not the courts, should determine whether the fees were reasonable. Air Transport Ass'n v. City of Los Angeles, supra, 844 F. Supp. at 553.

In carrying out our responsibility for enforcing the statutory prohibition against unreasonable fees, we have substantial discretion to choose the proper procedures for investigating a complaint that an airport's fee changes are unreasonable. Cf. Northwest Airlines v. DOT, 15 F.3d 1112, 1122 (D.C. Cir. 1994); Louisiana Ass'n of Independent Producers v. FERC, 958 F.2d 1101, 1114-1115

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11 The City had originally contended that paragraph (e)(1) of the new statute exempts its fees from any proceeding under that statute. That paragraph states that the new procedures do not apply to "a fee imposed pursuant to a written agreement with air carriers using the facilities of an airport." On the ground that airlines have been paying the new fees under their standstill agreement with the City, the City claimed that this statutory exemption is applicable. Appeal at 4-5. This misconstrues the agreement. The fees were imposed by an ordinance of the City's Department of Airports. See Exhibits ATA-36 and ATA-37. In the standstill agreement the carriers only agreed to pay the increased fees under protest while preserving their position that the new fees were unlawful.

(D.C. Cir. 1992). Our discretion would allow us in this case to use the same expedited procedures prescribed by the statute, even if the statute itself were inapplicable to the dispute over the LAX fees.

The City itself admitted this when it answered the original complaint, even though it argued that the new statute was inapplicable. The City conceded that the airlines had the right to obtain a Secretarial decision on the lawfulness of the new fees even if the new statutory procedure did not apply and that the Secretary could adopt for such a proceeding the same procedures created by the new statute: "The Secretary has the power to establish procedures with respect to the air carriers' complaint that essentially parallel those of 49 U.S.C. 47129, including the requirement that a determination of whether 'a significant dispute exists' be made within 30 days of filing and that a final decision be issued no later than 120 days of filing." Response at 2-3. Indeed, in a letter to the Secretary filed with the response, the City even requested that he adopt virtually the same procedures "which would implement a prompt and complete consideration of the Complaint and . . . finally put this controversy behind us":

> You do, however, possess other authority to review complaints and Los Angeles urges that you use that authority to resolve this complaint on the same expedited basis as would govern a complaint under [49 U.S.C. 47129]. The City of Los Angeles strongly opposes any deferral or delay in the resolution of this Complaint.

Accordingly, even if the City's jurisdictional arguments were correct, we could still adopt the same procedures for resolving the complaint against the LAX fees.[12]

2. Significant Dispute Determination

Under the terms of the statute, within thirty days of the filing of a complaint we "shall assign the matter to an administrative law judge" unless we find that "no significant dispute exists." 49 U.S.C. 47129(c)(2). After considering the amended complaint, the brief supporting the complaint, the City's answer, and the other pleadings, we find that the complaint presents a significant dispute about the reasonableness of the increased landing fees at LAX. We also find that the

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12 For a proceeding outside the scope of the Authorization Act, however, that statute would not give us the authority to require a bond or letter of credit from an airport pending the completion of our proceeding. We are determining that the financial security requirement does not apply to the City. We would also have to find other authority for an order requiring refunds by the airport, in cases where we find that the fees at issue are unreasonable. Here, however, as the City has stated earlier, the standstill agreement entitles the carriers signing it to refunds if the fees are held unlawful. Whether all of the complaining carriers in this proceeding could be included in an order requiring refunds is an issue we need not address until we determine whether the fees are unreasonable.

complaint is within the scope of the statute as to the U.S. airlines among the Complainants. As a result, we must assign this case to an ALJ for a hearing.

In adopting the procedural rules for airport rates and charges proceedings, we set forth the purpose of the statute's limitation to "significant disputes": "Congress established the extraordinary dispute resolution program in section 47129 to ensure that carriers and airports can obtain a prompt decision when there is an important fee dispute." 60 Fed. Reg. at 6921 (emphasis added). The dispute over the reasonableness of the increased landing fees at LAX is clearly an important dispute.

Los Angeles is the nation's second-largest city, and LAX is its third busiest airport. Furthermore, this dispute involves a sizable amount of money. The airlines charge that each year the City will collect $48 million more from the increased fees than its actual costs of operating the airfield and apron. Amended Complaint at 48. In addition, this dispute concerns a major increase in the airport's fees. The new fees are three times the size of the previous landing fees. Finally, the arguments made by the Complainants on their face appear to be substantial and worthy of investigation.

While the City asserts that this dispute is not subject to 49 U.S.C. 47129 for other reasons, it does not contend that the dispute lacks significance.

Although the City claims that the Complainants have failed to show that the fees are unreasonable, we find under the scheme created by the new statute that we must assign this dispute to an ALJ for hearing. Congress directed us to take such action within thirty days unless we found that no significant dispute existed. Given the opposing arguments made by the City and the Complainants, and the volume of evidence, case citations, and argument submitted by each side in support of its position as to the reasonableness of the fees, we cannot conclude at this time that there is no dispute warranting further consideration at a hearing.

The airlines' complaint must satisfy a second condition before the carriers will be entitled to a hearing under the new statutory procedures -- the dispute must also involve fees that were "in dispute" on the date of the statute's enactment. We find that the increased landing fees at LAX were in dispute on that date. The airlines had challenged the fees' lawfulness in a district court suit and appealed that court's dismissal of their suit to the Ninth Circuit. That appeal was pending on the date of enactment of the new statute, and the Ninth Circuit did not grant the parties' stipulation to withdraw the appeal until December 21, 1994. Exhibit ATA-46. Furthermore, the airlines were paying the increased fees under protest, and in their standstill agreement with the City they specifically preserved their right to challenge the fees in an administrative or judicial proceeding.

3. The Parties to the Proceeding

a. The Foreign Carriers

Five of the Complainants and many of the airlines filing follow-on complaints are foreign carriers. The City argues that these carriers may not be complainants in this proceeding, since the statute specifically authorizes only "air carriers", defined as U.S. carriers, to file complaints.

We have determined as a matter of discretion to accept these complaints. We have the authority to adopt procedures for investigating the reasonableness of airport fees under our general authority to enforce the reasonableness requirement established by 49 U.S.C. 47107 and 49 U.S.C. 40116. We used that authority to adopt procedures allowing foreign carriers to file complaints against new or increased fees in section 47129 proceedings, even though we assumed that foreign carriers did not have a statutory right to file such complaints, because it would more efficient to resolve all complaints about an airport's fees in a single proceeding. 60 Fed. Reg. at 6919.

In arguing that foreign carriers may not be deemed complainants in this case, the City relies almost entirely on the statutory language, which appears to exclude foreign carriers.[13] The City again ignores our longstanding authority to enforce the preexisting prohibitions against unreasonable airport fees. That authority allows us to use the same procedures for complaints filed by foreign carriers, even if they are not eligible to file complaints by statute. The City, moreover, does not claim that the inclusion of the foreign carriers in the Complainants will harm the City or prejudice its ability to present its case.

Finally, the City errs in its claim that allowing foreign carriers to obtain an expedited investigation into the reasonableness of airport rates would give them

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13 Some of the foreign carriers filing complaints note, however, that the courts have construed "air carrier" as including foreign carriers. See, e.g., British Airways Answer at 7, n. 3, citing South African Airways v. Dole, 817 F.2d 119, 127 (D.C. Cir. 1987). There the context made it clear that Congress was referring to foreign carriers when it used the phrase "air carriers," since otherwise the statute would have been meaningless. However, the foreign carriers have pointed out that the United States' bilateral air services agreements with foreign countries almost universally prohibit each country from discriminating against carriers of the other country. See, e.g., Reply of Certain Foreign Airlines at 7-10. That obligation presumably would require the United States to provide equally effective procedural remedies for U.S. and foreign carriers in airport rate disputes and so would be violated if U.S. carriers, for example, could obtain refunds for fees paid under protest while foreign carriers could not. Since the Court also pointed out in South African Airways that Congressional statutes should not be read in a manner which would violate the United States' agreements with foreign countries unless the Congressional intent was clear, 817 F.2d at 125-126, it is possible that 49 U.S.C. 47129 should be read as giving foreign carriers the right to file complaints.

"extraordinary rights" inconsistent with ensuring equal treatment between U.S. carriers in foreign countries and foreign carriers in this country. The bilateral air services agreements between the United States and foreign governments obligate each party to ensure that the carriers of both countries receive nondiscriminatory treatment. See, e.g., Reply of Lauda Air at 6. Thus, we think that it is appropriate to allow foreign carriers to participate in this proceeding consistently with our bilateral agreements.

b. The Follow-on Complaints

Under our rules, after one airline files a complaint against an airport's new or increased fees, other airlines may file complaints against the same fees within seven days. Section 302.603(b). Our scheduling notice of March 7 noted, among other things, that the seven-day period for filing additional complaints would expire on March 9. On March 9 thirty-seven carriers filed such complaints in this docket (as discussed below, still other carriers filed complaints after March 9).

The City has moved to dismiss these follow-on complaints on the ground that none were filed within the sixty-day period set by the Authorization Act, even if that period is deemed to begin running on the statute's date of enactment as to fees in dispute on that date.

The airlines filing the follow-on complaints generally argue that we should include them as complainants as a matter of discretion.

We have determined to accept these complaints, even though these carriers did not file complaints within sixty days of the enactment of the statute.[14] We have the authority to adopt procedures for investigating the reasonableness of airport fees under our general authority to enforce the reasonableness requirement established by 49 U.S.C. 47107 and 49 U.S.C. 40116. As discussed above, we used that authority to adopt procedures allowing foreign carriers to file complaints against new or increased airport fees in section 47129 proceedings, even though we assumed that foreign carriers did not have a statutory right to file such complaints. We took that action because it would be more efficient to resolve all complaints about an airport's fees in a single proceeding. If we did not accept the follow-on complaints in this proceeding, those carriers would have the right to file a complaint with the FAA against the City under Part 13 of the FAA's rules. Such a result would be illogical.

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[14] In adopting our procedural rules, we noted that the seven-day period allowed for filing additional complaints could not override the statutory requirement that any complaint be filed within sixty days of the airlines' receipt of notice of the adoption of the new or increased fee. 60 Fed. Reg. 6923, 6924. The rule itself states that "all complaints" "must be filed on or before the 60th day after the carrier receives written notice . . . of the imposition of the increase in the fee." Section 302.603(b).

Furthermore, several of the foreign carriers have pointed out that their filing of a follow-on complaint cannot fairly be deemed untimely. Those carriers arguably did not know that they could file a complaint with us against the LAX fees until our procedural rules created that right, since the statute on its face appears to give only U.S. carriers the right to file complaints under its provisions. See, e.g., Reply of Additional Airlines at 6; Lauda Air Reply at 4-5. While we recognize that five foreign airlines joined in the filing of the Complainants' original complaint, other foreign carriers could reasonably doubt their ability to file a complaint until our adoption of the procedural rules explicitly allowed the filing of complaints by foreign carriers.

Furthermore, the acceptance of the follow-on complaints should not significantly prejudice the City. The carriers filing follow-on complaints will be submitting no evidence of their own, and we are limiting their ability to file briefs.[15]

c. Late-Filed Complaints

Polar Air Cargo, Emery Worldwide Airlines, ABX Air, Skywest, Markair, AVIANCA, Aviateca, LACSA, Polynesian Airlines, Taca International Airlines, and VASP filed complaints after the due date. Each asked for leave to file its complaint late. The City has moved to dismiss these complaints on the ground that the carriers did not meet the seven-day deadline for filing add-on complaints.

We will deny the motions for leave to file the late complaints. The airport rate cases must be considered and decided within rigid statutory time limits. For example, if we miss the deadline for our review of an ALJ's recommended decision, the ALJ's decision will become the final order of the Department. It will be difficult for us (and the parties) to meet the deadlines unless the parties meet the due dates for filings. Except in compelling circumstances we will be unable to accept late filings in these cases. We recognize that we often allow parties in other types of proceedings to file pleadings after the applicable due date, but those proceedings are not subject to such strict, short statutory deadlines. As a

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[15] The City argues that we must dismiss a number of the add-on complaints (and Varig) because the higher LAX fees were not "in dispute" as to these carriers since they had not joined in the original litigation challenging the fees and were not parties to the standstill agreement. Respondents' Motion to Dismiss the Add-on Complaints at 9-12. As a matter of administrative efficiency, we prefer to include all of the timely-filed add-on complaints in this proceeding, since the carriers would have the right to file a complaint against the reasonableness of the fees under Part 13 of the FAA's rules. Whether these carriers may obtain retrospective relief under the Authorization Act will depend on whether they meet the statutory conditions for such relief. The factors pointed out by the City may affect those carriers' ability to obtain relief in this proceeding or under the standstill agreement.

result, we cannot afford to be lenient on late filings in this case and in other airport rate cases.[16]

In addition, as the City points out, allowing carriers to file complaints after the due date is unfair to the airport respondent, since it has less time for preparing its answer to the complaints. Respondents' Motion to Dismiss Add-on Complaints at 14-15. In our procedural rulemaking we stated that the fourteen-day answer period provided the airport would give it "a minimum" of seven days to prepare its answer to any follow-on complaints filed after the initial complaint. 60 Fed. Reg. 6920. Here three of the carriers -- AVIANCA, LACSA, and Polynesian -- tried to file their complaints on the due date for the City's answer to all the complaints, and three others -- Aviateca, Taca, and VASP -- wanted to file complaints one day after the due date for the City's answer.

We have reviewed the reasons given by the airlines filing the late follow-on complaints and conclude that they do not justify the late filings. Each of the carriers seeking leave to file late explicitly or implicitly concedes that it received the Complainants' amended complaint on the date of filing or on the following day. Since we published our procedural rules, moreover, on February 3, all carriers with a potential interest in this proceedings should have been aware of the need to file a response within a short period of time after receiving the complaint. Those rules specifically prescribe a seven-day deadline for filing add-on complaints. As a result, each of these carriers had sufficient notice to know of the deadline for filing add-on complaints.

We therefore find that the reasons given for the late filings are inadequate. For example, while several carriers claim they did not receive our March 7 scheduling notice before March 9, that notice only confirmed the procedural dates already set by our rules. That a carrier's counsel was absent during much of the period before the March 9 deadline is insufficient justification for a late filing, since arrangements should have been made for a timely response despite the counsel's absence. While two carriers -- Aviateca and Taca -- assert that the complaints were served on the airline's station manager, who did not understand the need for a quick response, those carriers should have protected themselves. As stated above, the statutory deadlines imposed on these proceedings make it impossible for accept the kind of late filings that may be accepted in other proceedings.

d. Air Transport Association

The original complaint and the amended complaint both included ATA as one of the Complainants. In the amended complaint the Complainants allege that

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[16] If we accepted the late complaints, moreover, there would be eleven more parties in this proceeding.

ATA's participation in the proceeding is justified because ATA represents the airline industry in agency proceedings and provides information collected from its members, and because our rule on airline trade association participation in our proceedings, 14 C.F.R. 302.10a, authorizes ATA's participation here. Amended Complaint at 6-7. In moving to dismiss ATA, the City argues that the statute allows only air carriers to file complaints and that ATA therefore may not be a complainant since it is not an air carrier.

We agree with the City. The statute specifically limits the ability to file complaints to air carriers, and we see no reason to expand the category of persons entitled to file complaints to include airline trade associations. Denying ATA the position of being a complainant should cause no harm to its member carriers, each of which was entitled to file its own complaint.

However, our rules do permit airline trade associations to participate in our proceedings under certain conditions, 14 C.F.R. 302.10a, which ATA represents are met in this case (for example, the Complainants state that the airline complainants have authorized ATA to represent them in this case). Since ATA is represented by the same counsel as the Complainants and has been filing pleadings jointly with the other Complainants, we will treat the amended complaint as a petition to intervene and allow ATA to participate in the case as such. Under these conditions, ATA's participation will not make the proceeding more complex or cause it to require more time for completion. ATA's participation also cannot harm the City. We note that the City's motion to dismiss ATA as a complainant made no effort to show that ATA's participation would harm the City.

e. Los Angeles Board of Airport Commissioners

The City has moved to dismiss the Los Angeles Board of Airport Commissioners on the ground that only the City of Los Angeles and the Los Angeles Department of Airports are proper parties to a suit under the law of California.

The Complainants oppose the City's motion. They contend that the Board of Airport Commissioners has been a plaintiff or defendant in other suits, that the City Charter gives the Board the power to operate LAX, and that the Board adopted the new fees. In support of these claims, the Complainants cited, inter alia, Jews for Jesus v. Board of Airport Commissioners of Los Angeles, 661 F. Supp. 1223 (C.D. Calif. 1985), aff'd, 785 F.2d 791 (9th Cir. 1986), aff'd, 482 U.S. 569 (1987).

We will deny the City's motion. As shown, the Complainants have presented evidence that the Board has been a litigant in other suits and that it controls the management of LAX. This evidence refutes the City's representation that the Board is neither a necessary nor a proper party. We also note that the standstill agreement was signed by the Board of Airport Commissioners, not by the

Department of Airports. Furthermore, no harm will be done if the Board continues to be included as a respondent in this proceeding. The City of Los Angeles, the Los Angeles Department of Airports, and the Los Angeles Board of Airport Commissioners are represented by the same counsel and have filed joint pleadings, so the Board's continued participation should impose no burden on the City.

f. Request for Intervention

Ordinarily a person may move to intervene or apply for Rule 14 status after we have sent a case to an ALJ. 14 C.F.R. 302.14(b), 302.15(c)(2). Our March 7 scheduling notice, however, stated that all such requests must be filed by March 16. We set that deadline since our ability to meet the statutory time requirements will be impaired if motions to intervene or obtain Rule 14 status are filed after we set the case for hearing.

Only the Airports Council International - North America (ACI) has filed a motion to intervene. ACI states that it represents the state, regional, and local bodies that operate the principal airports served by scheduled airlines in the United States. ACI wishes to intervene so that it may file briefs and responsive pleadings in this case; ACI represents that it does not intend to offer any evidence. ACI points out that our decision in this case may greatly affect ACI's members. It contends that it satisfies the conditions for intervention under 14 C.F.R. 302.15.

The Complainants oppose ACI's motion, notwithstanding their claim that an airline association, ATA, is a proper party to this proceeding.

We find that ACI's intervention request should be granted. Our rule states that we should liberally interpret the criteria for intervention to facilitate public participation in our proceedings. ACI, like ATA, has a substantial interest in our examination of complaints about the reasonableness of airport fees, since our decisions are likely to affect its members. Moreover, we believe ACI's proposed limited participation may reasonably be expected to assist in the development of a sound record and will not broaden the issues. ACI's limited participation in this case should cause no delay, since ACI intends only to submit briefs and responsive pleadings, and ACI has a legitimate interest in the issues in this case.

4. Conduct of the Proceeding

a. Scope of the Issues

Under our rules, airline complainants must set forth their case in their complaint and the accompanying briefs and evidence submissions: "Carriers filing complaints . . . . will generally be expected to submit documentation that contains the filing party's entire position and supporting evidence," 60 Fed. Reg. 6923. We adopted that rule so that we could decide cases under 49 U.S.C. 47129 within the

time limits set by Congress. As a result, the hearing in this proceeding must be confined to the specific issues raised by the Complainants' complaint and supported by the evidentiary filings already submitted. The ALJ should allow a party to submit additional evidence only for good cause shown.

The Complainants have set forth specific allegations supporting their claim that the new landing fees are unreasonable. The specific issues to be investigated in this proceeding are the following, set forth in the Amended Complaint at paragraphs 106 through 140 and 157 through 159:

(1) whether the City improperly included in the rate base rental charges for the land under the airfield and apron;

(2) whether the rate base improperly includes amortization charges for capital projects already paid for by the airlines;

(3) whether the City has improperly allocated to the airfield cost center indirect roadway access costs;

(4) whether the City has failed to credit the rate base with net aeronautical revenues derived from other general aeronautical revenue sources;

(5) whether the City has improperly failed to credit the airfield and apron cost centers with their proportionate share of the interest income earned by the Department of Airports;

(6) whether the City has improperly failed to adjust the fees to reflect actual expenses in the 1993-1994 fiscal year and budgeted expenses in the 1994-1995 fiscal year;

(7) whether the City has required the airport to reimburse it at unreasonable levels for direct and indirect City services; and

(8) whether the City has wrongly charged the airport for the cost of a police substation located on airport property.

We direct the ALJ to investigate these issues and make findings on whether the City's fee methodology and calculation on these specific issues are valid. By initiating this proceeding, we do not intend to endorse or challenge the propriety of any particular rate policy used by airports.

The Complainants and the City have made a variety of charges that we believe need not be examined further at the hearing. For example, the hearing should not consider such issues as the City's claims that the airlines were trying to take over control of LAX, that the airlines refused to negotiate with the City over a new fee structure when their longterm leases expired, and that the airlines are

trying to force the City to reinstate residual fees. The City has claimed that its new fees are significantly lower than the landing fees charged by other major airports (for example, the three airports in the New York City metropolitan area). As the Complainants assert, such a comparison of the LAX fees with other airport fees is irrelevant. The hearing must determine whether the LAX fees are justified by the costs at LAX.[17]

The Complainants similarly submitted a substantial amount of evidence to support their allegation that the City has been planning to increase fees so that the airport will generate surplus revenues that can be transferred to the City's general fund. While this allegation may be relevant to the extent that it shows that the City has a motive for increasing the landing fees to allegedly unreasonable levels, the parties should focus on whether the increased fees are in fact justified by the airport's costs.

The Complainants mention the City's plan to transfer to the City's general fund $43 million received from the condemnation of land used for building the Century Freeway and charge that any such transfer would unlawfully divert airport revenue to non-airport uses. Amended Complaint at 78-79. The FAA has reviewed the legality of that proposed transfer and concluded that the Department would not initiate an action to block the transfer. February 28, 1995 Letter from Cynthia Rich, Associate Administrator for Airports, to Theodore O. Stein, President, Board of Airport Commissioners, Exhibit ATA-81. The letter noted, however, that the airlines could file a complaint against the transfer under the FAA's enforcement procedures. Id. at 10. In their reply the Complainants stated that they intended to file a complaint against the transfer when the FAA adopts its procedures for enforcing the prohibition against the diversion of airport funds to non-airport uses. Reply at 40, n. 19. The airlines have since filed a separate complaint with the FAA against the City on this issue.

While the FAA letter also stated that a future increase in airport fees resulting from the transfer of the condemnation proceeds could lead to a proceeding under 49 U.S.C. 47129, id. at 2, the FAA did not suggest that the increase would be examined in this proceeding, which is based on a 1993 fee increase. The Complainants, moreover, have provided little evidence or argument in support of their position that the transfer was a factor in the 1993 fee increase. Since the Complainants have filed a complaint with the FAA, we believe that the legality of the transfer should not be considered in this proceeding.

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[17] Although the level of fees charged by other airports is irrelevant, the accounting practices may be relevant. For example, the Complainants claim that virtually every other airport uses the historical cost of its land in its rate base, not the estimated current market value of the land. If this claim is true, the ALJ should consider it along with the City's contrary arguments and other relevant evidence in determining whether the LAX fees are reasonable.

b. Examination of the City's Cost Methodology

In addition to attacking certain specific guidelines contained in the Policy Statement, as discussed below, the City makes a more general argument that we may not examine in detail the various components of its rate methodology. The City reads the statutory prohibition against the Secretary's prescription of a fee as a prohibition against his conducting a detailed analysis of the airport's methodology. In addition, according to the City, the courts have repeatedly held in public utility rate cases that a rate will be reasonable if the end result is reasonable, even if the rationality of certain aspects of the methodology are doubtful. Finally, the Supreme Court's decisions on the reasonableness of airport charges assertedly establish the principle that an airport's fees must be upheld if they are generally reasonable. Respondents' Brief at 18-22, citing Evansville-Vanderburgh Airport Authority District v. Delta Airlines, 405 U.S. 707 (1972), and Northwest Airlines v. County of Kent, 114 S. Ct. 855 (1994).

The City's claim that we may not closely examine the reasonableness of its calculation of the landing fees is wrong. Congress specifically charged us with the responsibility of determining whether disputed airport fees were reasonable -- and to ensure that complainant airlines received a prompt hearing on their claims that a fee was unreasonable, Congress imposed a strict procedural schedule requiring us to resolve such claims within a 120-day period. Congress surely would not have established such extraordinary procedures if it thought that we would only defer to the airport's judgment on the reasonableness of a fee. Moreover, it would be impossible for us to determine whether a fee is reasonable -- whether the end result bears a reasonable relation to the airport's costs -- if we did not examine whether the costs claimed by the airport were justifiable. And the City's complaints about our adoption of the Policy Statement ignore Congress' directive that we adopt standards for determining the reasonableness of airport fees. 49 U.S.C. 47129(b)(2).

The statutory prohibition against the Secretary's prescription of a fee, moreover, is consistent with our view of our obligations. The statute gives airports the choice of adopting a residual fee methodology, a compensatory fee methodology, or a combination of the two. 49 U.S.C. 47129(a)(2). We specifically affirmed in the Policy Statement the right of each airport to make that choice. 60 Fed. Reg. 6916 (para. 2.1.4). But the airport's right to make an initial determination of the fees it wishes to charge cannot be transformed into a prohibition against our review of the reasonableness of the result, a review which necessarily involves a review of the components of the costs claimed by the airport.

Similarly misguided is the City's reliance on Evansville and Kent County for the proposition that this agency must approve an airport fee if it is generally reasonable. The Supreme Court clearly stated in Evansville that it was assessing the reasonableness of the fee under a Commerce Clause standard, not under a

more rigorous standard authorized by a Congressional statute. 405 U.S. at 709. See also Kent County, 114 S. Ct. at 861. And in Kent County the Court made it clear that our review of a fee's reasonableness need not be confined within the limits of a judicial review of reasonableness: "It remains open to the Secretary, utilizing his Department's capacity to comprehend the details of airport operations across the country, and the economics of the air transportation industry, to apply some other formula (including one that entails more rigorous scrutiny) for determining whether fees are 'reasonable' within [the Anti-Head Tax Act]; his exposition will merit judicial approbation so long as it represents a permissible construction of the statute." 114 S. Ct. at 864, n. 14. As the Court explained, we are better equipped than the courts to engage in public utility-type ratemaking with respect to airport rates. 114 S. Ct. at 863, 865.

The City also errs in its citation of numerous cases upholding the rate established by a regulatory agency as a basis for its claims that we must defer to its judgment on what fees may reasonably be charged the airlines using LAX. Respondents' Brief at 19-20, citing, e.g., Hope Natural Gas Co. v. FPC, 320 U.S. 591 (1944). The City essentially has the law backwards -- its authorities support the proposition that our judgment in a proceeding under 49 U.S.C. 47129 will be entitled to deference on judicial review, not that the regulated utility's judgment is entitled to deference.

In a related argument, the City asserts that the Policy Statement is unconstitutional because it will deny the City a fair return on its investment in LAX. This argument misstates the effect of the Policy Statement. First, the Policy Statement specifically allows airports to charge fees covering their costs and capital expenses. 60 Fed. Reg. at 6916 (para. 2.3). Secondly, the Policy Statement does not apply to the rates and charges assessed on non-aeronautical users of airport facilities and property, including, for example, people using the airport's parking lots and concessions such as rental car companies, stores, and restaurants. 60 Fed. Reg. at 6908-6909. And despite the City's argument that the use of historical costs necessarily denies regulated firms the fair return required by the Constitution, the Supreme Court has upheld a regulatory agency's use of historical costs in setting rates. Hope Natural Gas Co., supra, 320 U.S. at 605.

c. Effect of the Department's Policy Statement

As directed by Congress, we have adopted standards for determining the reasonableness of an airport's fees. 60 Fed. Reg. 6906 (February 3, 1995). The City argues that the Policy Statement may not be applied in determining whether its fees are reasonable. Among other things, the City contends that any application of the Policy Statement in this case would violate the principle against retroactive regulation and that the policy statement, especially insofar as it requires the use of historic costs for the valuation of land, is contrary to widely-accepted economic principles and judicial decisions on the lawfulness of airport rates and public utility rates. The airlines, on the other hand, contend that the

Policy Statement is consistent with airport and public utility rate-setting principles, that the City departed from established airport practices by not using historical costs in its rate methodology, and that the Policy Statement should be applied in this proceeding. See, e.g., Reply Brief at 13-14.

We have determined to allow the City to argue in this proceeding that the Policy Statement should not be applied to a determination of the reasonableness of its rates, since they were adopted in July 1993, well before we adopted the Policy Statement.[18] The ALJ should therefore consider the parties' evidence on the applicability issue and also on whether the City's rate methodology was consistent with standard practices followed by airports during the time that the City developed the rates.

d. The Procedures for the Investigation

As required by Congress, we adopted procedural rules for airport rate cases like this one. Rules Applicable to Proceedings Concerning Airport Fees, Subpart F of our Rules of Practice, 14 C.F.R. Part 302, Subpart F. Those rules supplement and modify our Rules of Practice, 14 C.F.R. Part 302, which are otherwise applicable to this proceeding.

As shown, the statute imposes strict deadlines on our consideration of this case. We will therefore require the ALJ to issue the recommended decision by Thursday, June 1. We will then have twenty-nine days to review that decision and issue a final decision by our deadline, Friday, June 30. We will leave to the ALJ's discretion the establishment of all other procedural dates while the ALJ is responsible for the case.[19]

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[18] In adopting the Policy Statement, we provided interested persons an additional opportunity to submit comments on the reasonableness standards. 60 Fed. Reg. at 6906. The supplemental comment period will end May 4, 1995.

[19] The City's answer claims that our procedural rules have denied it due process because it has not had an adequate opportunity to prepare its defense. Answer at 62. The City nowhere provides any explanation of how the time-frames set by the rules (which merely carry out the procedural deadlines set by Congress) have hampered its ability to present its case. The volume of material submitted by the City certainly suggests that the City has had an adequate opportunity to prepare its evidence and arguments. The airlines began challenging the fees in July 1993, and there has been previous litigation over the fees' reasonableness, so the City has known for some time what arguments would probably be made by the airlines. Moreover, while the City's March 22 letter proposed that all parties agree to give us more time to review the filings, it has made no effort to obtain more time for itself and the other parties. We also note that the City's response to the Complainants' original complaint suggested that the Secretary should adopt the procedural schedule set by 49 U.S.C. 47129, even though the City argued that the statute itself did not apply to their complaint against the LAX fees.

Our rules for airport rate cases allow parties to file petitions for review five calendar days after the ALJ issues the recommended decision and to file answers in support of or opposition to any such petition within four calendar days after the service of the petition. We decided at that time that we would not obligate ourselves to take review of every ALJ recommended decision in an airport rate case. 60 Fed. Reg. at 6925. Given the importance of this case, and its status as one of the first cases to be heard under the new statute, we have decided that we will take review of the ALJ's decision.

The parties accordingly should file briefs rather than petitions for review. Each party may file an opening brief five calendar days after the ALJ issues the recommended decision and a reply brief three calendar days thereafter. All such briefs must be served in accordance with section 302.617 of our procedural rules for airport rate proceedings, and the format of each brief must comply with our general rule governing briefs to the decisionmaker, 14 C.F.R. 302.31. We will not consider motions for oral argument, however, since the short period of time allowed for our review of the ALJ's decision will an argument impracticable.

We will also impose special page limits for the briefs. The opening briefs filed by the Complainants and the City may each be no longer than fifty pages, the limit specified by 14 C.F.R. 302.31(c)(3), and their reply briefs may be no longer than twenty pages. The opening brief filed by any other party in this proceeding may be no longer than twenty pages, and any reply brief no longer than ten pages. We believe these limits are reasonable, since it will be difficult for us to make a final decision within the short amount of time available for our decisionmaking without limits on the length of the parties' briefs. We note, moreover, that the ALJ will presumably have given each of the parties the opportunity to file a brief after the hearing ends.

In addition, we cannot reasonably allow each of the add-on complainants the ability to file its own brief, because the amount of argument opposing the City's fees would substantially outweigh the amount of argument by the City (and perhaps ACI) defending the fees and because the material would likely be duplicative.[20] We also note that none of the add-on complainants has filed any evidence and that their interest on the reasonableness issue is identical to the interest of the Complainants. The foreign carriers and the U.S. carriers, however, may have somewhat different positions on the issues involving the relief sought by them. We will therefore limit the briefs of the add-on complainants (that is, all of the carrier parties except the Complainants) by requiring the U.S. carriers to file joint briefs and the foreign carriers to file joint briefs. Thus there will be one opening brief from the U.S. carriers filing add-on complaints and one opening

20 For example, on March 20 the add-on complainants filed over twenty separate replies to the City's answer to the amended complaint.

brief from the foreign carriers filing add-on complaints, and one reply brief from each such group.[21]

To assist us in meeting the statutory deadlines, our procedural rules require each party to submit its evidence in its complaint or its answer to the complaint, as the case may be. Sections 302.606(a), 302.607(b). The ALJ accordingly should not allow any party to introduce additional evidence except for good cause, for example, if a party was unable to submit relevant and material evidence earlier due to its inability to obtain it from an opposing party.

In addition, given the short period allowed for the hearing in this case, we will not accept petitions for reconsideration of this order.

Finally, the City's motion for leave to file an unauthorized document, a reply on the letter of credit issue, caused the Complainants to urge us to strictly enforce our procedural rules and not allow parties to file unauthorized pleadings. Although they do not object to the filing of that particular reply, they point out that replies are generally barred by our rules. Complainants' Response to Respondents' Motion at 2, citing 14 C.F.R. 302.6(b). We agree with the Complainants that we, the ALJ, and the parties will have difficulty meeting the statutory deadlines in this case unless the parties comply with our procedural rules. As explained above, we are dismissing the untimely complaints filed by several carriers for that reason. While we may be willing in unusual circumstances to accept pleadings not authorized by our rules and late pleadings, the parties should be aware that we are unlikely to accept future filings that are inconsistent with our rules and orders in this proceeding.

5. Discovery

a. The Complainants' Information Requests

The airlines have requested the Department to compel the City to produce additional documents relevant to the fee increase, a request considered unreasonable by the City since the airlines already obtained the City's documentation. Attachment B to the Complainants' Certificate required by 14 C.F.R. 302.605(c). The City has objected to this request and suggests that we have the ALJ determine whether any additional information should be required of the City.[22]

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21 Requiring the filing of joint briefs is consistent with the practice of the United States Court of Appeals for the District of Columbia Circuit, which often requires all parties on the same side of a case (except government parties) to file a joint brief. Handbook of Practice and Internal Procedures, D.C. Circuit (1993), at 78.

22 The Complainants responded to the City's objections in a letter dated March 20, rather than by a pleading. In the future such arguments should be made by pleading.

We have determined to grant the Complainants' request in part. Attached hereto is a list of the evidentiary material that must be provided by the City, since we find that the information is relevant to the issues in this case. We are not adopting the City's suggestion that the matter be referred to the ALJ, since the tight procedural schedule for this case would make it difficult for the ALJ to require the production of the additional information if the ALJ determines it is necessary. We are requiring the City to submit this information within seven days. The ALJ may modify this directive for good cause shown.

On March 15 the Complainants filed a supplemental list of information which they are requesting. The information listed in the supplemental request concerns the City's transfer of the proceeds of the condemnation award. As explained above, the legality of that transfer will not be considered in this proceeding. We therefore deny the Complainants' supplemental request.

b. The Complainants' Request for a Subpoena

The Complainants have asked us to issue a subpoena so they may take the deposition of Donald A. Miller, a longtime employee of the City's Department of Airports. According to the Complainants, he is very knowledgeable about the Complainants' allegations but is unwilling to voluntarily discuss the issues with the Complainants since he was demoted in 1993 for speaking out against the City's planned revenue diversions. Amended Complaint at 69.

We will not issue the requested subpoena. While our rules authorize such depositions, 14 C.F.R. 302.20, only rarely are depositions taken in any of our proceedings. Moreover, the Complainants have neither satisfied the rule's requirement for obtaining a deposition nor shown that they would be unable to present their case without his testimony. Authorizing the deposition is also likely to delay the hearing.

6. The Complainants' Request for a Letter of Credit

When an airport increases its fees (or imposes a new fee) paid by the airlines under protest and the airlines file a complaint under 49 U.S.C. 47129, the airport usually must submit a letter of credit, a bond, or other suitable credit facility covering the fees in dispute paid during the 120-day period of a proceeding under that statute. The Complainants ask us to require the City to submit a letter of credit for the amount of disputed fees paid from July 1993 through June 1995, while the City contends that the statute exempts it from the letter of credit requirement, even if the dispute over the LAX fees is within the scope of 49 U.S.C. 47129.

a. The Relevant Statutory Provisions

The statutory provision requiring airports to provide financial security is part of the provisions on the payment of a disputed fee pending our investigation of the fee's reasonableness, 49 U.S.C. 47129(d). Subparagraph (1)(A) requires the complainant airlines to pay the fee under protest while we are investigating the fee's lawfulness. If an airline pays the fee, paragraph (2) bars the airport from denying the airline reasonable access to the airport's facilities and from interfering with the airline's services as a means of enforcing the fee. Subparagraph (1)(B) states that any amounts paid under protest shall be refunded or credited to the airline "in accordance with directions in the final order of the Secretary within 30 days of such order."

Subparagraph (1)(C), the financial security requirement at issue here, reads as follows,

> In order to assure the timely repayment, with interest, of amounts in dispute determined not to be reasonable by the Secretary, the airport shall obtain a letter of credit, or surety bond, or other suitable credit facility, equal to the amount in dispute that is due during the 120-day period established by this section, plus interest, unless the airport and the complainant air carrier agree otherwise.

Under subparagraph (1)(D), the airport must provide the required financial security to the Secretary within twenty days of the filing of the complaint.

b. The Pleadings

The Complainants' amended complaint argues that the City must provide a letter of credit "equal to the entire amount in dispute plus interest," which the Complainants estimate as at least $67 million. That amount includes the disputed fees paid or payable by the Complainants from July 1993, the date when the fees increased, through June 1995, the date when we must issue a final decision if we investigate the LAX fees under 49 U.S.C. 47129. Amended Complaint at 67-68.

Several of the complaints filed later by other airlines also ask us to require a letter of credit for the amount in dispute. See, e.g., Complaints filed by Aero California et al. and by Lauda Air.

The City opposes the airlines' request for a letter of credit. The City argues that we may not require a letter of credit from it for several reasons. The City contends that Congress intended to exempt this dispute from the financial security requirement, as shown by the statute's language and its history. The City also asserts that its due process rights would be violated if it were required

to post a letter of credit merely on the basis of a complaint when we had neither determined that the complaint had merit nor ruled on the jurisdictional arguments presented by the City. In addition, the City points out that the Complainants' request for a letter of credit covering the amount of fees in dispute for the period from July 1993 through June 1995 is inconsistent with the statutory language, which requires that the airport's financial security cover only the fees in dispute for the 120-day period of the investigation under the new statutory procedures.

The City further contends that we should stay the financial security requirement since it would be costly and almost impossible for the City to obtain a letter of credit in the amount demanded by the Complainants. Finally, the City asks us to stay any decision that it must provide a letter of credit so that it can seek expedited judicial review of that decision. Expedited Motion at 10, n. 4.

We issued a notice on March 17 advising the parties that the airlines must file their answers to the City's motion on the letter of credit issue by March 20, the due date for their responses to the City's answer to their complaints.

In response, the Complainants filed an answer arguing that the City's motion was without merit. In particular, the Complainants claim that the City's due process argument has no merit, since assertedly neither the States nor their agents, local governments, have due process rights. The Complainants state, however, that to avoid this issue, they will consent to a deferral of a ruling on the letter of credit matter until we determine whether to assign the complaint against the LAX fees to a hearing before an administrative law judge under 49 U.S.C. 47129. The Complainants contend that we should require a letter of credit for all of the amounts in dispute, since Congress wished to ensure that the airport provided security for the entire amount in dispute, not just the amount of disputed fees paid under protest during the 120-day period. And the Complainants conclude by pointing out that the City's alleged inability to obtain a letter of credit has no merit, since, among other things, the new landing fees have been generating massive revenue surpluses.[23]

We determined to defer our decision on the financial security requirement until April 3, the deadline for our decision on whether the complaints should be assigned to an ALJ. Order 95-3-39 (March 22, 1995). We relied on the willingness of almost all of the airlines commenting on the issue to waive a letter of credit until we ruled on whether the complaints against the fees were within the scope of 49 U.S.C. 47129.

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[23] The City filed a reply to the Complainants' answer accompanied by a motion for leave to file an unauthorized document. We will accept the City's reply, since the Complainants do not object to our accepting the document. Their general concern with the filing of unauthorized documents is discussed above in our description of the procedures to be followed in this case.

c. The Department's Decision

Under the statute the City must provide a letter of credit or other form of financial security unless the final clause in the subparagraph -- "unless the airport and the complainant air carrier have agreed otherwise" -- exempts the City from the requirement. We find that the City is exempt.

As noted above, the City and the airlines serving LAX entered into the December 1, 1993, standstill agreement, which preserved the airlines' right to challenge the lawfulness of the increased fees while requiring them to pay the increased fees under protest. That agreement includes provisions entitling the carriers to a refund with interest if the fee increase is held unlawful. Paragraph 3 states that the City will refund the fee increases "[i]n the event a federal agency or court of competent jurisdiction renders a final determination that any portion of the landing fees paid by a Carrier to [the airport] for the use of LAX was unlawful and directs or declares that a refund of such fees should be paid, [the City] shall refund to the Carrier at that time the portion of the landing fees found to be unlawful, with accrued interest at the federal judgment rate . . . ." Neither this paragraph nor any other part of the standstill agreement obligates the City to provide a bond, letter of credit, or other form of financial assurance on the payment of the refunds.

The City claims that the standstill agreement's lack of a bonding requirement forecloses us from requiring a bond or letter of credit. The Complainants did not address this argument at all.

We find that the City's interpretation of the statute is correct. The statute, as indicated, requires the airport to provide financial security "unless the airport and complainant air carrier agree otherwise." In our view, the City and the airlines did agree otherwise when they signed the standstill agreement.

Furthermore, the statute's legislative history supports the City's position. The bill initially considered by the Senate had a somewhat different form of financial security provision.[24] That bill did not require a letter of credit or bond. Instead, it would have required the fees paid under protest to be deposited into an escrow account. During the floor debate on this bill, Senator Feinstein of California stated that a provision had been added at her request to ensure that Los Angeles would not be subject to this escrow requirement. 140 Cong. Rec. S6988 (June 16, 1994). Senator Feinstein presumably was referring to the following exception written into the paragraph otherwise requiring an escrow for disputed fee payments: "except for a fee paid as part of an agreement entered into prior to June 9, 1994, under which such fee is paid under protest." That clause would

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24 The relevant provisions of the bill discussed on the Senate floor, H.R. 2739, appear at 140 Cong. Rec. S7139, 7146 (June 20, 1994).

have exempted the City from the escrow requirement, since the airlines were paying the increased fees at LAX under protest under an agreement entered into before June 9, 1994.

Senator Ford, the manager of the Senate bill, agreed with Senator Feinstein's statement: "I certainly concur that it was not our intent that the escrow apply to the existing controversy between the city of Los Angeles and the airlines operating at LAX." 140 Cong. Rec. S6988. And Senator Feinstein had earlier stated, "I would like to thank the manager of this bill for ensuring that nothing in this bill is retroactive in terms of affecting the interim settlement agreement between LAX and the airlines that was reached last November." 140 Cong. Rec. S6986 (June 16, 1994).

The legislation enacted by Congress, of course, contains neither an escrow requirement nor a clause specifically exempting fees paid under protest under agreements made before June 9, 1994. Instead, the final bill contains the financial security clause, which has a similar exemption, "unless the airport and complainant air carrier agree otherwise." This exemption must have been designed to exempt all airports, not just LAX, from the financial security requirement, if the airport already had an agreement with the airlines that did not obligate the airport to provide such security. We believe that that exception, like the one included in the Senate bill at Senator Feinstein's request, is intended to exempt the City from providing a letter of credit or other form of financial security to assure repayment of the LAX fees currently in dispute.

A group of twelve airlines including Aero California that filed a joint complaint (the Additional Carriers) argue, however, that the standstill agreement's lack of a provision excusing the City from providing a form of financial security means that the carriers and the City have not agreed to waive the requirement. Reply of Additional Airlines to Respondents' Expedited Motion at 2. The Senate debate made it quite clear, however, that the bill was specifically designed to exempt the City from the type of financial security then required by the bill. And by not obtaining the City's commitment to provide financial security as part of the interim settlement, the airline parties to the standstill agreement agreed that none would be required. The Additional Carriers also note that some of them were not parties to the standstill agreement, although the City is arguing that carriers who were not parties to that agreement have no right to file a complaint against the fees in this proceeding. More importantly, the Additional Carriers' pleading does not indicate why those carriers chose not to participate in the agreement.

Without some explanation of the basis for their non-participation we do not see how we could require a letter of credit for those carriers.[25]

Finally, we note that the amount of financial security required by the new statute would not cover most of the amount in dispute. The airlines have been paying the increased fees at LAX under protest since July 1993. The statute, however, requires an airport to furnish a letter of credit or other security only for the amount of fees in dispute payable during the 120-day period of our investigation. 49 U.S.C. 47129(d)(1)(C). Although the Complainants have asked for a letter of credit covering the amount in dispute for that entire two-year period, Amended Complaint at 67-68, the statutory requirement of a letter of credit, if applicable to this dispute, would obligate the City to provide financial security only for the 120-day period, not for the two-year period. American Airlines v. Puerto Rico Ports Authority, Order 95-3-41 at 4 (March 22, 1995).[26]

In these circumstances, we find that the City is exempt from the obligation to provide a letter of credit or a bond, and we deny the airlines' request for such financial security.

ACCORDINGLY:

1. We set the complaint filed on March 2 by the Air Transport Association et al. against the City of Los Angeles et al. for hearing before an administrative law judge and retitle this proceeding The Los Angeles International Airport Rates Proceeding;

2. We direct the administrative law judge to determine whether the landing fees charged air carriers for the use of Los Angeles International Airport are unreasonable and to make findings on the allegations of unreasonableness made in the complaint of the Air Transport Association et al., as summarized in this order;

3. We direct the administrative law judge to issue a recommended decision no later than Thursday, June 1, 1995;

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[25] In addition, we have determined that the Complainants' complaint must be considered under the section 113 of the Authorization Act because those carriers filed a complaint within sixty days of the statute's enactment. The Additional Carriers did not make such a filing, and we are consolidating their complaint in this proceeding as a matter of discretion. The language of section 113 suggests that the financial security required by that statute is intended to cover carriers filing complaints within the scope of the statute.

[26] The Complainants have consistently demanded that the City submit a letter of credit, even though the statute seemingly allows the City a choice of the form of financial security. If in future cases the airline complainants seeking financial security are willing to accept only one type of security, they should explain why other forms of financial security are unacceptable.

4. We direct the respondents, the City of Los Angeles, the Los Angeles Department of Airports, and the Los Angeles Board of Airport Commissioners, to submit the evidentiary material and information listed on Appendix I hereto within seven calendar days, provided that the administrative law judge may modify this directive for good cause shown;

5. We will take review of the administrative law judge's recommended decision; opening briefs to the decisionmaker shall be filed five calendar days after the issuance of the recommended decision; reply briefs to the decisionmaker shall be filed three calendar days after the due date for opening briefs; and we will not accept motions for oral argument;

6. The opening briefs and reply briefs to the decisionmaker must be served in accordance with section 302.617 of our procedural rules for airport rate proceedings; the format of each brief must comply with our general rule governing briefs to the decisionmaker, 14 C.F.R. 302.31; the opening brief filed by the complainants and the City of Los Angeles et al. may not exceed fifty pages in length; the reply brief filed by the complainants and the City of Los Angeles et al. may not exceed twenty pages in length; and no other party may file an opening brief longer than twenty pages or a reply brief longer than ten pages;

7. We dismiss the Air Transport Association as a complainant in this proceeding but grant it permission to participate as an intervenor jointly with the airline complainants which together with the Air Transport Association filed an amended complaint on March 2, 1995;

8. We accept the complaints filed on March 9 by Aero California, Aerolineas Argentinas, Aerovias de Mexico, Compagnie Nationale Air France, Alitalia -- Linee Aeree Italiane, All Nippon Airways, American International Airways, AOM Minerve, British Airways, Cargolux Airlines International, Carnival Air Lines, Cathay Pacific Airways, Challenge Air Cargo, Corse-Air International, El Al Israel Airlines, Eva Airways, Evergreen International Airlines, Iberia Lineas Aereas de España, Japan Airlines, Korean Air Lines, Linea Aerea Nacional de Chile, Lauda Air, Deutsche Lufthansa Aktiengesellschaft, Malaysia Airlines, Martinair Holland, Philippine Airlines, Qantas Airways, Reno Air, Rich International Airways, Singapore Airlines, Swissair, Target Airways d/b/a Great American Airways, Tower Air, Viking International Airlines, Virgin Atlantic Airways, and World Airways, and we consolidate those complaints in this proceeding, provided, however, that the U.S. carriers filing the complaints accepted by this paragraph must file a joint brief and joint reply brief after the issuance of the recommended decision, that the foreign carriers filing complaints accepted by this paragraph must file a joint opening brief and a joint reply brief, and that each opening brief may be no longer than twenty pages and each reply brief no longer than ten pages;

9. We deny the motions for leave to file complaints by Polar Air Cargo, Emery Worldwide Airlines, ABX Air, Skywest Airlines, Markair, Aerovias Nacionales de Colombia, Aviateca, Lineas Aereas Costarricenses, Polynesian Airlines, Taca International Airlines, and Viacao Aerea Sao Paulo;

10. We deny the motion to dismiss the Los Angeles Board of Airport Commissioners as a respondent in this proceeding;

11. We grant the motion for leave to intervene filed by the Airports Council International – North America so that it may submit briefs and responsive pleadings, but not evidence, in this proceeding;

12. We grant the motion to withdraw filed by Nippon Cargo Airlines;

13. We dismiss as moot the motion of Air Transport Association et al. for leave to file a reply brief in excess of the page limits;

14. We determine that the City of Los Angeles, the City of Los Angeles Department of Airports, and the Los Angeles Board of Airport Commissioners are exempt from the requirement in 49 U.S.C. 47129(d)(C) that the airport provide a letter of credit, bond, or other suitable credit facility;

15. We dismiss the Appeal to the Secretary of Transportation filed by the City of Los Angeles;

16. We grant the motions for leave to file unauthorized documents filed by American International Airlines, Cathay Pacific Airways, and the City of Los Angeles et al.; and

17. We will not accept petitions for reconsideration of this order.

By:

PATRICK V. MURPHY
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

APPENDIX I

ADDITIONAL EVIDENCE REQUEST

1. Budgeted and actual revenues and expenses by cost center at Los Angeles International Airport (LAX) for fiscal years 1993-1994 and 1994-1995. We understand that any financial statement for the 1994-1995 fiscal year may be preliminary for the year to date.

2. For capital projects funded during fiscal year 1993-1994, supply the following information: (a) description of the project, (b) total cost projection, (c) amount expended during fiscal year 1993-1994, (d) source of funds, and (e) whether the project was funded through bond proceeds, Passenger Facility Charges, or federal grants.

3. Beginning balances, contributions to, transfers from, and ending balances for restricted funds, capital improvement accounts, appropriated and unappropriated balances, and reserves, for July 1, 1993, and the period since then.

4. The source and amount of funding used to acquire each of the "locally funded" assets described in Exhibit 1, Table C.19 to the Respondents' March 16, 1995 answer.

5. The Department of Airports' budgeted and actual costs for police, fire, crash, and rescue functions for the 1993-1994 and 1994-1995 fiscal years.

6. Statement of the Department of Airports' equipment capitalization policies.

7. Description of the methodology used for setting reserves for (1) the maintenance and operations reserve and (2) insurance and litigation trusts.

8. Breakdown of the interest income allocated to LAX, by cost center, during the 1992-1993, 1993-1994, and 1994-1995 fiscal years (for the 1994-1995 year state the budgeted amount for the fiscal year and the actual amount for the year-to-date).

9. List of capital items costing less than $100,000 that were expensed as part of the landing fee calculation during 1991-1992, 1992-1993, and 1993-1994 fiscal years, including a description of each such capital item, its cost, and its projected useful life.

10. Detailed description of the current debt service for fiscal years 1991-1992 through 1993-1994 related to the acquisition of land parcels at LAX, including an identification of the parcels that pertain to each direct cost center.

11. Copies of any surveys or records which described the traffic patterns, vehicle counts, and types and uses of the access roadways, which were prepared since the beginning of the 1991-1992 fiscal year.

12. Identify any roads that are included in the indirect access cost center that are physically located on the airfield or the apron, if any, and the costs included in this cost center which relate to these roadways.

13. Detailed description of all revenues and fees received by LAX or the Department of Airports pertaining to the use of roadways at LAX for the 1993-1994 and 1994-1995 fiscal years. State the amounts, source, and method of calculation of any such revenues and fees.

14. Describe in detail all charges to the Department of Airports or LAX for direct or indirect services provided by the City of Los Angeles, the basis for each charge, and whether each charge has been calculated on a basis that is consistent with such charges to other City Departments, for each of the fiscal years from 1991-1992 through 1993-1994.