

BEFORE THE UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

**NORTHWEST AIRLINES, INC., DELTA  
AIR LINES, INC., AIRTRAN AIRWAYS,  
INC., CONTINENTAL AIRLINES, INC.,  
AND SOUTHWEST AIRLINES, INC.**

Complainants

v.

**INDIANAPOLIS AIRPORT AUTHORITY,  
INDIANAPOLIS INTERNATIONAL  
AIRPORT, BAA-INDIANAPOLIS LLC**

Respondents

Docket No. 16-07-04

---

**RESPONDENTS' ANSWER TO  
COMPLAINING AIRLINES' MOTION FOR LEAVE TO  
FILE AND RESPONSE**

Robert A. Duncan\*  
General Counsel  
Indianapolis Airport Authority  
Indianapolis International Airport  
2500 South High School Road, Suite 100  
Indianapolis, IN 46241-4943

Phone: 317-487-5004  
Fax: 317-487-5034

Pablo O. Nüesch\*  
Jeffrey A. Schwarz  
Spiegel & McDiarmid  
1333 New Hampshire Ave, N.W.  
Washington, DC 20036

Phone: 202-879-4000  
Fax: 202-393-2866

Counsel for Respondents

August 9, 2007

\*Designated to receive service in this matter

BEFORE THE UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

**NORTHWEST AIRLINES, INC., DELTA  
AIR LINES, INC., AIRTRAN AIRWAYS,  
INC., CONTINENTAL AIRLINES, INC.,  
AND SOUTHWEST AIRLINES, INC.**

Complainants

v.

**INDIANAPOLIS AIRPORT AUTHORITY,  
INDIANAPOLIS INTERNATIONAL  
AIRPORT, BAA-INDIANAPOLIS LLC**

Respondents

Docket No. 16-07-04

---

**RESPONDENTS' ANSWER TO  
COMPLAINING AIRLINES' MOTION FOR LEAVE TO  
FILE AND RESPONSE**

Pursuant to 14 C.F.R. §16.19(c), Respondents, Indianapolis Airport Authority (“Authority” or “IAA”), the public agency sponsor of the Indianapolis International Airport (“Airport” or “IND”), and BAA-Indianapolis LLC (“BAA-Indianapolis”) file this answer to the July 30, 2007, Motion for Leave to File and Response (“Motion”) submitted by the Complaining Airlines in this proceeding.<sup>1</sup> The Complaining Airlines’ motion is an extra-procedural surreply that merely reargues matters that were briefed fully during the two rounds of pleadings that are contemplated by the rules of procedure for Part 16 investigations. The Complaining Airlines’ positions lack merit for reasons that the Respondents have already explained and that are

---

<sup>1</sup> The Complaining Airlines are Northwest Airlines, Inc., Delta Air Lines, Inc., Airtran Airways, Inc., Continental Airlines, Inc., and Southwest Airlines Co.

reiterated briefly below. Moreover, FAA should make clear that it will entertain no further unsolicited pleadings prior to issuance of the Director's Determination in this investigation.

The Complaining Airlines seek leave to surreply in order to "(i) address new points raised by Respondents and misstatements of applicable precedent and (ii) explain how Respondents' Rebuttal tried but failed to obfuscate the central issue in this case." Motion at 1. However, the matters raised in Respondents' rebuttal were not new and were neither misstatements nor obfuscations. Respondents should be able to answer the allegations made against them without being subject to extra-procedural filings that add nothing to the administrative record.

The central facts are that the Authority and FedEx negotiated a long-term extension (and expansion) of FedEx's leasehold, enabling FedEx to expand its facilities and operations at the Airport. As part of that lease amendment ("Amendment No. 3"), the Authority and FedEx negotiated a carefully-tailored rent credit applicable to one component of FedEx's rent and mathematically limited to ensure that the amount of the credit (if any) would always be less than the incremental landing fee revenue produced by FedEx's operations resulting from the expanded facilities. Respondents have shown that Amendment No. 3 (including the rent credit) produces net benefits that reduce the residual landing fee rate paid by the Airport's Signatory Airlines. The Complaining Airlines reply that, no matter how much lower the net benefits of FedEx's transaction drive the airport's residual landing fee rates, those rates could be lower still if they reflected FedEx's additional revenue and landed weight but *not* the rent credit through which (along with other aspects of the deal) those benefits were obtained. FedEx's rent credit cannot be viewed in isolation from the incremental activity that FedEx will be required to generate before it qualifies for the rent credit.

