



D.C. Circuit Affirms Decision on Airport Revenue

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On April 23, 2019, the D.C. Circuit issued a decision rejecting Airlines For America's (A4A) challenge to payments made by the Port of Portland (the owner and operator of Portland International Airport) to the City of Portland for stormwater and sewage services. The challenge focused on certain components of the utility bills that imposed additional charges to (1) defray costs of a Superfund clean-up on the Willamette River unrelated to the Airport and (2) off-site stormwater management fees to address City-wide stormwater issues, and not on the Airport itself.

A4A argued since those charges were unrelated to Airport operations, the payment of those charges was revenue diversion. The FAA disagreed in a series of informal letters, a Part 16 Director's Determination, and a Final Agency Decision. The D.C. Circuit affirmed the FAA's Decision by agreeing with the FAA that utility costs are operating expenses of an airport that can be paid with airport revenue. The Court also affirmed the FAA's finding that the charges were reasonable because the fees were based on a fair, transparent methodology that applied to all rate payers.

Kaplan Kirsch & Rockwell prepared an amicus brief on behalf of Airports Council International (ACI) in support of the FAA and the Port.

For further information, please contact Eric Pilsk, Peter Kirsch, or Nick Clabbers.