

## FINAL AGENCY DECISION

### CITY OF PORTLAND, MAINE PORTLAND, MAINE

Application number 10-05-C-00-PWM to impose a passenger facility charge (PFC) at the Portland International Jetport (PWM) for use at PWM.

In accordance with §158.29 of the Federal Aviation Regulations (Title 14, Code of Federal Regulations, Part 158), this Final Agency Decision includes all appropriate determinations to approve or disapprove, in whole or in part, imposition of a PFC at PWM and use of PFC revenue on 3 projects at PWM.

#### **Procedural History (Dates)**

Air carrier consultation meeting (Waived): November 12, 2009, was the date that all waivers were received.

A notice was sent out to the air carriers on October 8, 2009, requesting a waiver of the consultation meeting.

Public notice posted: March 10, 2010.

Federal Aviation Administration (FAA) application receipt: April 1, 2010.

FAA finding that application is substantially complete: April 12, 2010.

#### **PFC Level, Amount, and Charge Effective Date**

Level of PFC:	\$4.50
Total approved net PFC revenue in this decision:	\$ 132,206,104
Earliest charge effective date:	November 1, 2010

November 1, 2010, is the "earliest" charge effective date and is based upon the estimated charge expiration date for the previously approved collections in application 02-03-C-00-PWM, as amended. If the City of Portland (City) changes the charge expiration date for the previous application, the charge effective date for this application will also change, so that the City can continue to collect the authorized amount of PFC revenue without a cessation in collections. Section 158.43(c) contains information regarding notification to air carriers and foreign air carriers of the charge effective date and changes to the charge expiration date. In establishing its charge effective date, the public agency must comply with §158.43(b)(3), which states, in part, that the charge effective date will be the first day of a month which is at least 60 days from the date the public agency notifies the carriers of approval to impose the PFC.

### Duration of Authority to Impose a PFC

The City is authorized to impose a PFC at PWM until the date on which the total net PFC revenue collected plus interest thereon equals the allowable cost of the approved projects or the charge expiration date is reached, whichever comes first. Based on information submitted by the City, the FAA estimates the charge expiration date for this decision to be April 1, 2040. Should the amount of PFC revenue collected for this application ever exceed the allowable costs for all approved projects in this application, the public agency's authority to impose a PFC for this application ceases. If the public agency's authority to impose a PFC ceases, the public agency must, without delay, submit a plan acceptable to the FAA to insure that it complies with applicable law, subject to loss of Airport Improvement Program (AIP) grant funds. Section 158.39(d).

### Cumulative PFC Authority Including Current Decision

#### DECISION SUMMARY TABLE

<b>Application Number</b>	<b>Approved for Collection</b>	<b>Approved for Use</b>
<b>91-01-C-00-PWM</b>	<b>\$12,233,751</b>	<b>\$11,983,751</b>
<b>93-01-C-01-PWM</b>	<b>(\$4,314,884)</b>	<b>(\$4,314,884)</b>
<b>93-01-C-02-PWM</b>	<b>(\$250,000)</b>	
<b>98-02-C-00-PWM</b>	<b>\$6,887,241</b>	<b>\$6,887,241</b>
<b>98-02-C-01-PWM</b>	<b>\$1,598,238</b>	<b>\$1,598,238</b>
<b>98-02-C-02-PWM</b>	<b>(\$1,499,018)</b>	<b>(\$1,499,018)</b>
<b>02-03-C-00-PWM</b>	<b>\$14,214,483</b>	<b>\$10,071,183</b>
<b>02-03-C-01-PWM</b>	<b>\$4,020,203</b>	
<b>02-03-C-02-PWM</b>	<b>\$1,190,730</b>	<b>\$1,190,730</b>

<b>02-03-C-03-PWM</b>	<b>(\$479,664)</b>	<b>(\$762,468)</b>
<b>05-04-U-00-PWM</b>		<b>\$8,163,503</b>
<b>05-04-U-01-PWM</b>		<b>\$282,804</b>
<b>10-05-C-00-PWM</b>	<b>\$132,206,104</b>	<b>\$132,206,104</b>
<b>Totals</b>	<b>\$165,807,184</b>	<b>\$165,807,184</b>

### Project Approval Determinations

For each project approved in this Final Agency Decision and for the application as a whole, the FAA, based on its expertise with the PFC program and airport development, exercises its judgment, and finds that the application and record thereof, contained substantial evidence to support the following determinations:

- The amount and duration of the PFC will not result in revenue that exceeds the amount necessary to finance the specific projects.
- Each approved project meets at least one of the objectives set forth in §158.15(a); is eligible in accordance with §158.15(b) (as set forth in the individual project determinations); and is adequately justified in accordance with §158.15(c) and paragraph 4-8 of FAA Order 5500.1, Passenger Facility Charge (August 9, 2001).
- Each project approved for collection at a PFC level above \$3, meets the requirements of §158.17(a)(2). In all cases, the FAA has determined (either that
  - Airport Improvement Program (AIP) funds are not expected to be available to fund the project in whole or in part.
- For those surface transportation or terminal projects approved for collection at a PFC level above \$3, the requirements of §158.17(a)(3) have been met. For each such project approved in this Final Agency Decision, the FAA has determined that the public agency has made adequate provisions for financing the airside needs at the airport including runways, taxiways, aprons, and aircraft gates.
- All project-related requirements pertaining to the airport layout plan and airspace studies have been met. Environmental requirements (§158.29(b)(1)(iv)) are discussed under a separate heading below.

- The collection process, including a request by the public agency not to require a class or classes of carrier to collect PFC, is reasonable, not arbitrary, nondiscriminatory, and otherwise in compliance with the law.
- The public agency has not been found to be in violation of §9304(e) or §9307 of the Airport Noise and Capacity Act (ANCA) of 1990 (since codified at 49 U.S.C. 47524 and 47526).
- The total approved net PFC revenue includes debt service and financing costs of PFC approved projects. Any PFC revenue collected in excess of debt servicing requirements shall be used for approved projects or retirement of outstanding PFC-financing costs.

**Projects Approved for Authority to Impose the PFC at PWM and Use the PFC Revenue at PWM at a \$4.50 Level**

<u>Description:</u>	<u>Approved Amount</u>
<b>1. Terminal Building Expansion</b>	
Bond capital	\$49,429,464
Financing and Interest	<u>\$71,287,923</u>
Total	\$120,717,387

This project consists of the expansion and renovation of portions of the terminal building at PWM. The expansion will provide an additional 147,303 square feet, an elevated walkway connection to the parking garage, which also serves the new security screening station queuing area, six new airline ticketing counters, three gates and hold room space. This project will renovate 9,056 square feet of the west end of the existing main terminal building to accommodate a fully automated baggage handling system. Two ticketing counters will be removed during the renovation. The 2006 Airport Master Plan (AMP) analysis identified the need for this terminal expansion to accommodate future passenger levels and that it should be completed by 2015. Over the past year, two new air carriers have started service at the airport which has resulted in passenger increases, higher than the forecasted levels in the AMP. Because of this increase the airport has experienced frequent terminal congestion during peak morning hours. The terminal expansion will allow for the additional area to accommodate the increase passenger levels and eliminate the unacceptable crowding in the hold rooms and ticketing counter areas. The current baggage screening is located in the lobby area; these areas are needed for airline ticketing queuing. The installation of an in-line baggage screening area will increase the available space for ticketing queuing. The three additional gates will be available for any new entrant air carrier that may want to start service at the PWM or any of the existing air carrier's requests for expansion.

**Determinations:**

Approved for collection and use.

PFC objective: This project will preserve and enhance capacity, security and competition by increasing the terminal square footage which will allow for increased passenger levels and facilities such as additional gates. Thus, this project meets the PFC objective to preserve or enhance security or capacity of the national air transportation system and furnish opportunities to enhance competition between or among air carriers.

Basis for eligibility: paragraphs 601 and 621 of FAA Order 5100.38C AIP Handbook, June 28, 2005 and PFC eligible in accordance with §158.15(b)(3) or §158.15(b)(6) as it relates to "gates and related areas". The City will provide periodic eligibility analysis as the project progresses. A final eligibility determination will be completed at the end of construction. The City inspection costs and eligibility determination will be based on actual hours of service provided. In accordance with 14 CFR Part 191, information regarding the specifics of this security project is not being provided in the public record. However, the FAA has reviewed the specific security elements of this project and has determined these elements to be eligible in accordance with paragraph 602 of FAA Order 5100.38C, AIP Handbook, June 28, 2005.

Estimated total project cost: \$135,251,149.

Proposed sources of financing: PFC revenue \$120,717,387 and local funding \$14,533,762

**2. Passenger Boarding Bridges**

Bond capital	\$1,350,000
Financing and Interest	<u>\$1,929,957</u>
Total	\$3,279,957

This project includes the acquisition and installation of three "Jet way" passenger boarding bridges to accommodate the three new gates in the terminal expansion project. The new passenger boarding bridges are flexible and can extend and retract to be able to connect to all sized aircraft (including regional jets). During the morning peak the airport is experience frequent congestion. This congestion can leave as many as 6 aircraft double stacked at the gates, without ground power utilities. Currently there are no available passenger boarding bridges for new entrant air carriers.

**Determinations:**

Approved for collection and use.

PFC objective: This project will preserve and enhance capacity and competition by increasing the number of passenger boarding bridges by three which will allow for increased passenger levels and the available space for any new entrant air carrier. Thus, this project meets the PFC objective to preserve or enhance capacity of the national air transportation system and furnish opportunities to enhance competition between or among air carriers.

Basis for eligibility: Basis for eligibility: paragraph 601 of FAA Order 5100.38C AIP Handbook, June 28, 2005, and PFC eligible in accordance with §158.15(b)(6) as it relates to "gates and related areas".

Estimated total project cost: \$3,279,957.

Proposed sources of financing: PFC revenue \$3,279,957.

### **3. Roadway Realignment Project**

Bond capital	\$3,378,650
Financing and Interest	<u>\$4,830,110</u>
Total	\$8,208,760

This project consists of the relocation of International Parkway to accommodate the terminal expansion. The project will also include new electrical, storm water, sewer, gas and water utilities. The current airport access roadway runs directly toward the terminal building, then makes a right 90 degree turn toward the airfield and then makes a left 45 degree turn to line up with the current terminal building. The roadway realignment will allow the current access roadway to continue directly toward the terminal expansion, eliminating any turns. The new access roadway will initially be a two lane road as it goes toward the terminal and then the road will split into a four lane section along the terminal expansion area. The two lanes in front of the terminal building will provide 720 feet of curbside for passenger drop-off and a left 'by-pass' lane. The outer two lanes will provide 560 feet of curbside passenger drop-off and a left 'by-pass' lane. The four lanes will then merge into two lanes at the existing passenger terminal. The roadway realignment is an integral part of the airport expansion and will provide vital utility elements for the terminal.

#### **Determinations:**

Approved for collection and use.

PFC objective: This project will preserve and enhance capacity, security and competition by providing passenger access and curbside facilities to the new terminal expansion which will accommodate increased passenger levels. Thus, this project meets the PFC objective to preserve or enhance security or capacity of the national air transportation system and furnish opportunities to enhance competition between or among air carriers.

Basis for eligibility: paragraph 620 of FAA Order 5100.38C AIP Handbook, June 28, 2005.

Estimated total project cost: \$8,208,760.

Proposed sources of financing: PFC revenue \$8,208,760

#### **Environmental Requirements**

The projects approved in this application for concurrent authority to impose and use the PFC were examined under the guidelines contained in FAA Order 5050.4B, Airport Environmental Handbook (2006) and one of these projects has

been determined to be categorically excluded from the requirement for formal environmental review and two projects were environmentally reviewed under an environmental assessment. The environmental assessment was completed and the final FAA Finding of No Significant Impact with respect to these projects was approved on November 13, 2009. There appear to be no extraordinary circumstances requiring further review.

#### **Request Not to Require a Class or Classes of Carriers to Collect PFC's.**

The City requests that the following class of air carriers be excluded from the requirement to collect PFC's: Air taxi/commercial operators (ATCO).

Determination: Approved. Based on information contained in the City's application, the FAA has determined that the proposed class accounts for less than 1 percent of PWM's total annual enplanements. The City should confirm, on an annual basis using prior year enplanement data, that the approved class does not exceed 1 percent of the total enplanements at PWM.

#### **Compliance with the Airport Noise and Capacity Act of 1990 (ANCA)**

The FAA is not aware of any proposal at PWM that would be found to be in violation of the ANCA. The FAA herein provides notice to the City that a restriction on the operation of aircraft at PWM must comply with all applicable provisions of the ANCA and that failure to comply with the ANCA and Part 161 makes the subject to provisions of Subpart F of that Part. Subpart F, "Failure to Comply With This Part," describes the procedures to terminate eligibility for AIP funds and authority to collect PFC revenues.

#### **Compliance with Subsection 47107(b) Governing Use of Airport Revenue**

As of the date of this approval the City of Portland has not been found to be in violation of 49 U.S.C. 47107(b) or in violation of grant assurances made under 49 U.S.C. 47107(b).

#### **Air Carrier Consultation and Public Notice Comments**

The following air carriers submitted disagreements during the air carrier consultation process for this application: Continental Airlines. Continental provided three areas of concern for the proposed terminal expansion project. The first is in reference to the current economic environment and that it requires extraordinary caution. Continental went on to state that this is impacting the industry across the country and that capital projects are consistently scaled back significantly during these time. Continental does recognize the need for some level of expansion to meet the current capacity needs at the airport. The City's response is that they are trying to take advantage of the times by utilizing the alternative minimum tax exemption on private activity bonds which provides 60

basis points and the historically low interest rates. Although other airports have seen significant passenger declines, PWM has had record high increases. The opportunity and need for the airport is immediate and the City has provided a financial plan that supports this project. The second comment has to do with "full maximization of PFC revenue until 2040" and not being able to address airside needs in the future. The current 20 year airport master plan shows very little in the way of airside needs beyond the maintenance of the infrastructure. The City has been very proactive in addressing the airside needs including the runway reconstruction and the construction of standard runway safety areas for both runways. The last of Continental Airlines comments is the risk of even greater increases in costs for the airlines. Continental Airlines comments do state that the City has done a "noteworthy" effort to reduce the project costs. The City has taken a value engineering approach to reduce the upfront, construction and operations and maintenance costs. The process reduced and refined the scope in order to reduce costs.

**Legal Authority**

This decision is made under the authority of 49 U.S.C. 46110 and 40117, as amended. This decision constitutes a final order to approve, in whole or in part, the City of Portland's application to impose a PFC at PWM and use PFC revenue on 3 projects at PWM. Any party to this proceeding having a substantial interest may appeal this decision to the courts of appeals for the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within 60 days after issuance of this decision.

**Concur**

*ACTING*

*T. Roy M. Rasmussen*  
Manager, New England Region  
Airports Division

4/12/10  
Date

**Nonconcur**

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Manager, New England Region  
Airports Division

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Date