

ATTACHMENT E

**AIR CARRIER CERTIFICATION OF AGREEMENT/DISAGREEMENT AND CITY
RESPONSE**

PUBLIC COMMENT ON PROPOSED ACTIONS AND CITY RESPONSE

The following items are included in this section:

- Page E-1 Letters received from air carriers certifying disagreement following the carrier consultation meeting.
- Page E-20 City response to air carrier comments.
- Page E-28 Comments received from public.
- Page E-53 City response to public comments.



P.O.Box 66034
AMF O'Hare
Chicago IL60666

Jun 9th 2008

Mr Michael Zonsius,
Dept of Aviation
City of Chicago
O'Hare Airport
Chicago IL60666

Dear Mr Zonsius

Aer Lingus hereby submits its written certification of Agreement/Disagreement
As to those proposed projects referenced in the city's notice of March 31 2008
And as amended and presented on May 8 2008.

Project : Airfield Design
Cost : \$191,588,175 PFC Funding \$191,588,175
Position : Certificate of Disagreement

Project : Western Terminal Area Planning
Cost \$5,000,000 PFC Funding : \$5,000,000

Position Certificate of Disagreement

This concludes the airline comments and certification of agreement/disagreement
regarding the City's proposed PFC application

Sincerely,

David McGrath
Station Manager ORD



June 9, 2008

Mr. Michael Zonsius
City of Chicago, Department of Aviation
10510 West Zemke Road, 2nd Floor
Chicago, IL 60666

Re: Application to Impose and Use Passenger Facility Charge Revenues (PFCs) for Additional Projects at ORD

Dear Mr. Zonsius,

ANA-All Nippon Airways thank you for the opportunity to respond on the application to be filed by the City of Chicago with the FAA to impose and use PFCs pursuant to the Federal Aviation Regulation (FAR) Title 14, CFR, Part 158 at Chicago O'Hare International Airport.

The airline hereby submits its written Certification of Agreement/Disagreement as to those proposed projects referenced in the City's notice of March 31, 2008 and as amended, presented and discussed at the consultation meeting on May 8, 2008.

It is ANA's understanding that PFC eligible projects, by statute, are those that preserve or enhance the safety, capacity, or security of the national air transportation system; reduce airport noise or mitigate noise impacts; or enhance competition among air carriers. Additionally, it is interpreted that the requirement that PFC-funded projects must qualify as AIP-eligible projects to mandate that PFC-funded projects be limited to those for which and immediate and justifiable need can be demonstrated or substantiated. Those projects not substantiated should be eliminated from the proposed PFC application and deferred until a justifiable need exists or can be demonstrated. ANA disagrees with the City of Chicago's proposal to finance the below projects using PFC funding.

The Airfield Design Project

For such a large PFC application, the criteria of "immediate and justifiable need" has not been satisfied as the conceptual airfield plan, although approved in 2001 by the FAA, has not been fully reanalyzed in light of the

A STAR ALLIANCE MEMBER 

ALL NIPPON AIRWAYS CO., LTD.
Chicago Airport Office

P.O. BOX 66467, O'Hare International Airport, Terminal 5, UL-228, Chicago, IL 60666-0647
Administration (773) 686-5220 E-3 Passenger Service (773) 686-5216



significant changes in airfield operations or demand since that time. Until a full and robust analysis of the potential scope, cost, implementation and plan of finance of any further airfield development has been completed, it is premature and inappropriate to commit hundreds of millions of dollars (\$191,588,175) in PFC funding toward the completed design of such airfield projects. The projects proposed for funding are further deemed to be premature in light of lack of airline approval required under the existing long term Lease and Use Agreement Section 8.06 to secure funding for and commencement of any capital improvement projects.

The Western Terminal Area Planning

The City of Chicago has not established that there is the necessary and appropriate demand for an additional terminal to support operations at the Airport. The proposed location on the far west side of the airport, separated by the central terminal complex by active taxiways, is ill-conceived, as it does not support an operation in which a large percentage of passengers use O'Hare as a connection hub. The additional infrastructure to support the connectivity of passengers and baggage between the new proposed terminal and the central terminal complex would only add to the cost to the airlines.

In light of the recent airline economic environment, in which airlines are reducing frequencies and services, a new terminal cannot be justified.

No airline or other Airport tenant has publicly expressed interest in or made a commitment to lease any part of this proposed facility.

ANA, along with the airline community at O'Hare, remains committed to working with the City of Chicago to plan and implement future projects to improve operations and enhance capacity at O'Hare. However, the recent and rapid adverse changes in the airline industry make thorough analysis of all financial investments more critical than ever. These drastic turns of events in the condition of the airline industry need to be factored into the revalidation process to ensure that the financial investments that are made continue to be justified.

Sincerely,

Thomas Trapp

Station Manager, O'Hare Airport Office

ANA-All Nippon Airways, Co. LTD.

A STAR ALLIANCE MEMBER 

ALL NIPPON AIRWAYS CO., LTD.

Chicago Airport Office

P.O. BOX 66467, O'Hare International Airport, Terminal 5, UL-228, Chicago, IL 60666-0647

Administration (773) 686-5220 ^{E-4} Passenger Service (773) 686-5216

June 6, 2008

Mr. Michael Zonsius
City of Chicago, Department of Aviation
10510 West Zemke Road, 2nd Floor
Chicago, IL 60666

Re: Application to Impose and Use Passenger Facility Charge Revenues
("PFCs") for Additional Projects at ORD

Dear Mr. Zonsius:

United Air Lines, Inc. and American Airlines, Inc. ("Airlines") appreciate the opportunity to comment on the referenced application to be filed by the City of Chicago ("City") with the Federal Aviation Administration ("FAA") to impose and use PFCs pursuant to the Federal Aviation Regulation ("FAR") Title 14, CFR, Part 158 at Chicago O'Hare International Airport ("Airport").

The Airlines hereby submit their written Certification of Agreement/Disagreement as to those proposed projects referenced in the City's notice of March 31, 2008 and as amended, presented and discussed at the consultation meeting on May 8, 2008.

It is our understanding that PFC eligible projects, by statute, are those that preserve or enhance the safety, capacity, or security of the national air transportation system; reduce airport noise or mitigate noise impacts; or enhance competition among air carriers. Further, we interpret the requirement that PFC-funded projects must qualify as AIP-eligible projects to mandate that PFC-funded projects be limited to those programs for which an immediate and justifiable need can be demonstrated or substantiated. Projects that cannot be justified based upon an immediate and justifiable need should be eliminated from the proposed PFC application and deferred for PFC consideration until such time as a definitive need exists or can be demonstrated.

With this as background, the Airlines respectfully submit the following comments regarding the City's proposed PFC program:

Project: Airfield Design

Cost: \$191,588,175 PFC Funding: \$191,588,175

Position: Certification of Disagreement

Comments:

The Airlines informed the City, prior to its filing of this PFC application, that they believe it is premature to submit such a large PFC application to fund all of the design for these numerous airfield projects. We still believe that such a large PFC request at this time is not a prudent use of scarce airport funding sources, and thus, the Airlines cannot support it as filed. The criteria of "immediate and justifiable need" has not been satisfied as the conceptual airfield plan, while approved in 2001 by the FAA, has not been fully re-analyzed in light of the significant changes in airfield operations or demand. United and American as the hub carriers have been working cooperatively with the City in an effort to validate the assumptions previously used to justify the conceptual airfield plan, however, this effort is in its preliminary stages. Until a full and robust analysis of the potential scope, cost, implementation and plan of finance of any further airfield development has been completed, it is premature and inappropriate to commit hundreds of millions of dollars in PFC funding toward the complete design of such airfield projects. Prior to the City's application being filed, United and American urged the City to only seek funding for a significantly smaller amount that was truly necessary at this time and to submit a larger application, as deemed appropriate, after the completion of the revalidation exercise. Unfortunately, the City did not accept the more modest and financially prudent approach, thus forcing the Airlines to oppose this application.

The projects proposed for funding are further deemed to be premature in light of the lack of airline approval required under the existing long term Lease and Use Agreement Section 8.06, to secure funding for and commencement of any capital improvement projects. Airline approval of such funding is under consideration pending the completion of the revalidation of the cost benefit analysis.

Project: Western Terminal Area Planning

Cost: \$5,000,000 PFC Funding: \$5,000,000

Position: Certification of Disagreement

Comments:

This project does not meet the criteria of an "immediate and justifiable need" as the City has not established that there is the necessary and appropriate demand for an additional terminal to support operations at the Airport. Therefore, this project, albeit planning, is ill-conceived and is an inappropriate candidate for the use of PFC funds. Furthermore, the location of the proposed Western Terminal, on the far west side of the airport, separated from the central terminal complex by active taxiways, is not conducive to the current or any proposed hub, spoke or international airline operations as it would disrupt passenger and baggage connectivity and require extensive and expensive people/baggage moving conduits.

No airline or other Airport tenant has publicly expressed interest in or made a commitment to lease any part of this facility. Additionally, both hub carriers, United and American, have told the City that they are not interested in the facility for their use and thus, since no other airport tenant's operations would justify the massive financial commitment this project will require, they will not approve the funding or construction of the facility or any associated infrastructure as required by Section 8.06 of the Use and Lease Agreement.

Given the other critical infrastructure and capital needs at ORD, it is imprudent to encumber additional PFCs for the above projects at this time. At such time as the existing airfield design is validated or modified to appropriately address the needs of the airfield operations to the mutual satisfaction of the Airlines and the City, the Airlines expect the City will reapply for PFC funding to support future airfield design. As for the Western Terminal Area Planning, until its need and feasibility are justified such that it is supported by the airlines, the Airlines believe that the City should remove the Western Terminal Area Planning from further consideration for funding, PFC or otherwise.

The Airlines remain committed to working with the City to plan and implement future projects to improve operations and enhance capacity at ORD. However, the recent and rapid adverse changes in the commercial aviation industry make thorough analysis of all financial investments more critical than ever. Within the last month, United and American, Chicago's major hub carriers, announced significant domestic mainline capacity reductions of 17% and 12%, respectively. Just yesterday, Continental announced an 11% reduction and we would not be surprised to see similar changes in domestic capacity by other carriers with the current jet fuel prices. In addition to the significant capacity reductions announced by network carriers, eight other airlines have filed for bankruptcy protection and some have completely shutdown, since the beginning of 2008. These types of drastic changes in overall industry condition ought to be factored into the revalidation process to ensure that the financial investments that are made continue to be cost justified.

This concludes the Airlines' comments and certification of agreement/disagreement regarding the City's proposed PFC application.

Sincerely,



Sandra M. Widerborg
Regional Manager
United Air Lines, Inc.



Michael K. Wesche
Sr. Principal
American Airlines, Inc.

cc: FAA Great Lakes Region
FAA/ADO
Laura Einspanier, AA
Ajay Singh, UA

Via Electronic & U.S. Mail

June 9, 2008

Mr. Michael Zonsius
City of Chicago, Department of Aviation
10510 West Zemke Road, 2nd Floor
Chicago, IL 60666

Re: ORD - Response to Proposed Application to Impose and Use Passenger Facility Charge (PFC) Revenues for Additional Projects at ORD

Dear Mr. Zonsius:

Pursuant to 14 CFR Part 158, "Passenger Facility Charges," Section 158.23, please accept this letter and the attachment hereto as Continental Airlines' written Certification of Agreement/Disagreement with respect to the Airport's intent to apply to the FAA to impose and use PFC revenues for Additional Projects at Chicago-O'Hare International Airport.

Continental hereby submits its written Certification of Agreement/Disagreement as to those proposed projects referenced in the City's notice of March 31, 2008 and as amended, presented and discussed at the consultation meeting on May 8, 2008.

It is our understanding that PFC eligible projects, by statute, are those that: preserve or enhance the safety, capacity or security of the national air transportation system; reduce airport noise or mitigate airport noise impacts; or enhance competition among air carriers. In addition, we interpret the requirement that PFC-funded projects also qualify as Airport Improvement Program eligible projects, mandating that PFC-funded projects be limited to those programs for which an immediate and justifiable need can be demonstrated. Projects that cannot be justified based upon substantiated current needs should be eliminated from the proposed PFC application and deferred for PFC application at a time when the need can be substantiated. Therefore, agreement cannot be provided for those projects that are based on long term projections of growth, or projects that do not meet the criteria established by statute.



Page 2
June 9, 2008

In the event that specific elements of a proposed project or projects are eliminated or changed prior to or after the filing by the Airport of the PFC application with the FAA, it is requested that the Airport provide notification to the undersigned and the respective air carrier of such changes. It is also requested that the Airport provide the section of the application that summarizes the carriers' responses to the PFC projects.

Should you have any questions regarding the above or the attached, I may be contacted at 713/324-6957.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil A. Maxfield".

Neil A. Maxfield
Senior Manager, Global Real Estate
Continental Airlines, Inc.

Attachment (1)

cc: FAA Great Lakes Region
Jim Hanselmann
ORD PFC file



CONTINENTAL AIRLINES, INC.
RESPONSE TO APPLICATION TO IMPOSE AND USE PFC REVENUES
FOR ADDITIONAL PROJECTS AT CHICAGO-O'HARE INTERNATIONAL AIRPORT
June 9, 2008

Project: Airfield Design

Cost: \$191,588,175 PFC Funding: \$191,588,175

Position: Certification of Disagreement

Comments:

The Airlines informed the City, prior to its filing of the PFC application, that they believe it is premature to submit such a large PFC application to fund all of the design for these numerous airfield projects. We still believe that such a large PFC request at this time is not a prudent use of scarce airport funding sources, and thus, the Airlines cannot support it as filed. The criteria of "immediate and justifiable need" has not been satisfied at the conceptual airfield plan level and while approved in 2001 by the FAA, has not been fully re-analyzed in light of the significant changes in airfield operations or demand. Until a full and robust analysis of the potential scope, cost, implementation and plan of finance of any further airfield development has been completed, Continental believes it is premature and inappropriate to commit hundreds of millions of dollars in PFC funding toward the complete design of such airfield projects. Prior to the City's application being filed, several airlines urged the City to only seek funding for a significantly smaller amount that was truly necessary at this time and to submit a larger application, as deemed appropriate, after the completion of the revalidation exercise. Unfortunately, the City did not accept the more modest and financially prudent approach, thus forcing the Airlines to oppose this application.

The projects proposed for funding are further deemed to be premature in light of the lack of airline approval required under the existing long term Lease and Use Agreement Section 8.06, to secure funding for and commencement of any capital improvement projects. Airline approval of such funding is under consideration pending the completion of the revalidation of the cost benefit analysis.



CONTINENTAL AIRLINES, INC.
RESPONSE TO APPLICATION TO IMPOSE AND USE PFC REVENUES
FOR ADDITIONAL PROJECTS AT CHICAGO-O'HARE INTERNATIONAL AIRPORT
June 9, 2008

(Continued...)

Project: Western Terminal Area Planning

Cost: \$5,000,000 PFC Funding: \$5,000,000

Position: Certification of Disagreement

Comments:

This project does not meet the criteria of an "immediate and justifiable need" as the City has not established that there is the necessary and appropriate demand for an additional terminal to support operations at the Airport. Therefore, this project, even at this design level, is ill-conceived and is an inappropriate candidate for the use of PFC funds. Furthermore, the location of the proposed Western Terminal, on the far west side of the airport, separated from the central terminal complex by active taxiways, is not conducive to the current or any proposed hub, spoke or international airline operations as it would disrupt passenger and baggage connectivity and require extensive and expensive people/baggage moving conduits.

No Airline or other Airport tenant has publicly expressed interest in or made a commitment to lease any part of this facility. Additionally, both hub carriers, have stated that they are not interested in the facility for their use and thus, since no other airport tenant's operations would justify the massive financial commitment this project will require, they will not approve the funding or construction of the facility or any associated infrastructure as required by Section 8.06 of the Use and Lease Agreement.

Given the other critical infrastructure and capital needs at ORD, it is imprudent to encumber additional PFCs for the above projects at this time. At such time as the existing airfield design is validated or modified to appropriately address the needs of the airfield operations to the mutual satisfaction of the Airline and the City, the Airlines expect the City will reapply for PFC funding to support future airfield design. As for the Western Terminal Area Planning, until its need and feasibility are justified such that it is supported by the Airlines, the Airlines believe that the City should remove the Western Terminal Area Planning from further consideration for funding, PFC or otherwise.



CONTINENTAL AIRLINES, INC.
RESPONSE TO APPLICATION TO IMPOSE AND USE PFC REVENUES
FOR ADDITIONAL PROJECTS AT CHICAGO-O'HARE INTERNATIONAL AIRPORT
June 9, 2008

(Continued...)

The Airlines remain committed to working with the City to plan and implement future projects to improve operations and enhance capacity at ORD. However, the recent and rapid adverse changes in the commercial aviation industry make thorough analysis of all financial investments more critical than ever. Within the last month, United and American, Chicago's major hub carriers, announced significant domestic mainline capacity reductions of 17% and 12%, respectively. Additionally we announced an 11% reduction and would not be surprised to see similar changes in domestic capacity by other carriers with the current jet fuel prices. In addition to the significant capacity reductions announced by network carriers, eight other airlines have filed for bankruptcy protection and some have completely shutdown, since the beginning of 2008. These types of drastic changes in overall industry ought to be factored into the revalidation process to ensure that the financial investments that are made continue to be cost justified.

This concludes Continental Airlines' comments and certification of agreement/disagreement regarding the City's application.



Pam Drenner
Regional Director

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Atlanta, GA 30320-6001
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pam.drenner@delta.com

June 9, 2008

Mr. Michael Zonsius, CFO
City of Chicago – Department of Aviation
10510 West Zemke Road, 2nd Floor
Chicago, IL 60666

RE: PFC Certification/Disagreement

Dear Michael:

In accordance with 14 CFR Part 158.23, this letter constitutes Delta Air Lines' (Delta) written Certification of Agreement or Disagreement with the City of Chicago's proposed PFC application as presented to the carriers at the March 31, 2008 PFC consultation.

Delta's certification(s) to the proposed PFC program at airports is guided by the following policy interpretation:

- By statute, PFC-eligible projects are those that preserve or enhance the safety, security, or capacity, reduce airport noise or mitigate airport noise impacts, or augment competition among air carriers.
- PFC-funded projects must qualify as AIP-eligible projects and PFCs are to be utilized to fund the local share after other available funding sources, such as the Airport Improvement Program (AIP Program) and State and local grants has been sought.
- Delta's interpretation of the Part 158 is that PFC-funded projects are to be restricted to those programs for which a near term and justifiable definitive need can be demonstrated or substantiated.
- PFC revenues may be used as they are received (on a pay-as-you-go basis) to directly pay for approved capital improvement projects (CIP), or they may be used to pay debt service on bonds backed by PFC revenues.
- Since, PFC funds are collected in the form of a charge applied only to the passenger airline tickets sold, PFCs should be used for supplemental CIP funding to the extent that these revenues are proportionate to the passenger carriers' allocable share of project costs, as if they were rate-based.

With this background, Delta respectfully submits the following comments regarding the city's proposed PFC Projects.

1. Project: Airfield Design

- Project Cost \$191,588,175
- PFC Funding: \$191,588,175 (100%)
- Position: **Disagreement**
- Comment: Insufficient detail was provided at the PFC Consultation and thereafter to substantiate the definitive need for a PFC encumbrance of this magnitude. What was provided amounted to a conceptual plan. The City was remiss in providing a full and robust analysis of scope, costs, schedule, completion and a plan of finance relative to the airfield development. The request to tie up nearly \$200M in PFCs at this juncture, results in a premature and impulsive grab for funds much needed for capital improvement projects. Further, the airlines have not yet approved Phase II of the O'Hare Master Plan (OMP) for which this airfield design is associated with. In light of this fact, the request for PFC funding is inappropriate and in conflict with the ORD Lease and Use Agreement Section 8.06.

2. Project: Western Terminal Area Planning

- Project Cost \$5,000,000
- PFC Funding: \$5,000,000 (100%)
- Position: **Disagreement**
- Comment: This Record of Decision (ROD) for this project spoke to balancing the capacity of the airfield to meet the needs of airlines, passengers, air cargo operators and other Airport users, and the capacity of terminal and support facilities. The OMP airfield development has done more to mere diminishing delay times while offering minimal capacity in Phase I. Phase II proposes to add additional capacity however that has already been demonstrated as "supportable" in utilizing the existing central terminal complex. Prior to flight reductions under the FAA imposed operational caps, there was much capacity operating sufficiently from the existing terminals. The progression with the Western terminal area is inconsistent with intent of the ROD especially in light of the recent industry-wide capacity reductions¹ and further capacity reductions from the additional wave of bankruptcies (8 airlines) in response to souring fuel costs. Additional capacity reductions and bankruptcies are further predicted by industry analysts. To complicate matters further, the airlines have not yet approved Phase II (airfield design) or Phase III of the OMP (Western Terminal) for which this project is associated with. In light of these culminating facts, the request for PFC funding is inappropriate, ill-timed and in conflict with the Lease and Use Agreement Section 8.06

¹ Announced Airline reductions as of 6/9/08: United 17-18% reduction in 2008-09 with discontinuation of TED; American 12% reduction after the summer peak; Continental 11-16% reduction in 4th Quarter 2008; Northwest 5% reduction after the summer peak; Delta 10% reduction effective 2nd half of 2008; US Airways 2-4% reduction in 2nd half of 2008.

Delta looks forward to a continued, strong working relationship with the City of Chicago and its Airport staff. Our shared interests begin and end with a desire for sustainable growth and maintenance of sagacious airport that best serves the demands of airline carriers and their traveling consumers.

Sincerely,
Delta Air Lines, Inc.

A handwritten signature in black ink, appearing to read "Pam Drenner".

Pam Drenner
Regional Director
Delta Corporate Real Estate/ Airport Affairs

cc: ORD AAAC
PFCinfo@airlines.org
Federal Aviation Administration



NORTHWEST AIRLINES®



Northwest Airlines, Inc.
Department A1135
2700 Lone Oak Parkway
Eagan MN 55121-1534
nwa.com

June 9, 2008

Mr. Michael Zonsius, CFO
City of Chicago, Department of Aviation
10510 West Zemke Road, 2nd Floor
Chicago, IL, 60666

RE: Proposed Passenger Facility Charge (PFC) Program -
Chicago O'Hare International Airport

Dear Michael

Pursuant to the provisions of 14 CFR, Part 158, §158.23, this letter serves as Northwest's written Certification of Agreement or Disagreement regarding the City of Chicago's proposed PFC application at O'Hare International Airport. This letter regards the Cities' "Notice of Intent to Impose Passenger Facility Charges" of March 31, 2008 as discussed at the Airlines' consultation meeting on May 8, 2008.

As a general comment, the PFC program has been developed to provide supplemental funding for eligible projects. Pursuant to the provisions of 14 CFR, Part 158, eligible projects must:

1. Preserve or enhance safety, security, or capacity of the national air transportation system;
2. Reduce or mitigate noise impacts resulting from an airport; or
3. Furnish opportunities for enhanced competition between or among air carriers.

With few exceptions the PFC statute requires that projects qualify as AIP eligible under the Airport and Airway Act of 1982 or the Aviation and Safety and Noise Abatement Act of 1979. It is also the understanding of Northwest that PFC funded projects be limited to those programs for which there is an immediate and demonstrated need. Projects that do not meet this criteria should be eliminated from the proposed PFC application and deferred until such time when need can be better demonstrated and substantiated.

Northwest cannot recommend for approval those projects which are based upon long term projections of growth or projects that do not meet the statutory requirements.

Project: Airfield Design

Cost: \$191,588,175

PFC Funding: \$191,588,175

Position: Certification of Disagreement

Comments:

Northwest believes it is premature to submit such a large PFC application to fund all of the design for these numerous airfield projects. We still believe that such a large PFC request at this time is not a prudent use of scarce airport funding sources, and thus the NWA cannot support it as filed. The criteria of "immediate and justifiable need" has not been satisfied and the conceptual airfield plan, while approved in 2001 by the FAA, has not been fully re-analyzed in light of the significant changes in airfield operations or demand. Until a full and robust analysis of the potential scope, cost,



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implementation and plan of finance of any further airfield development has been completed it is premature and inappropriate to commit hundreds of millions of dollars in PFC funding toward the complete design of such airfield projects

The projects proposed for funding are further deemed to be premature in light of the lack of airline approval required under the existing long term Lease and Use Agreement Section 8.06, to secure funding for and commencement of any capital improvement projects. Airline approval of such funding is under consideration pending the completion of the revalidation of the cost benefit analysis.

Project: Western Terminal Area Planning

Cost: \$5,000,000 PFC Funding: \$5,000,000

Position: Certification of Disagreement

Comments:

This project does not meet the criteria of an “immediate and justifiable need” as the City has not established that there is the necessary and appropriate demand for an additional terminal to support operations at the Airport. Therefore, this project, albeit planning, is ill-conceived and is an inappropriate candidate for the use of PFC funds. Furthermore, the location of the proposed Western Terminal, on the far west side of the airport and separated from the central terminal complex by active taxiways, is not conducive to the current or any proposed hub, spoke or international airline operations as it would disrupt passenger and baggage connectivity and require extensive and expensive people/baggage moving conduits.

No Airline or other Airport tenant has publicly expressed interest in or made a commitment to lease any part of this facility. Additionally, it is our understanding that both hub carriers, United and American, have told the City they are not interested in the facility for their use and thus, since no other airport tenant’s operations would justify the massive financial commitment this project will require, NWA can not approve the funding or construction of the facility or any associated infrastructure as required by Section 8.06 of the Use and Lease Agreement.

Given the other critical infrastructure and capital needs at ORD, it is imprudent to encumber additional PFCs for the above projects at this time. Until such time as the existing airfield design is validated or modified to appropriately address the needs of the airfield operations to the mutual satisfaction of Northwest and the City, Northwest expects the City to wait to apply for PFC funding to support future airfield design. As for the Western Terminal Area Planning, until its need and feasibility are justified such that it is supported by NWA, Northwest believes that the City should remove the Western Terminal Area Planning from further consideration for funding, PFC or otherwise.

Northwest remain committed to working with the City to plan and implement future projects to improve operations and enhance capacity at ORD. However, the recent and rapid adverse changes in the commercial aviation industry make thorough analysis of all financial investments more critical than ever. Within the last month, United and American, Chicago’s major hub carriers, announced significant domestic mainline capacity reductions of 17% and 12% respectively. Just yesterday, Continental announced an 11% reduction. In addition we would not be surprised to see similar changes in domestic capacity by other carriers with the current jet fuel prices. In addition to the significant capacity reductions announced by network carriers, since the beginning of



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2008 eight other airlines have filed for bankruptcy protection. Some have completely shutdown. These types of drastic changes in overall industry should be factored into the revalidation process to ensure that financial investments made continue to be cost justified.

In the event specific elements of these proposed projects are eliminated or changed prior to the filing by the City of the PFC application with the FAA, Northwest requests that the City notify Northwest of such changes. In addition, please provide Northwest with a final copy of the City's PFC application to the FAA.

Northwest appreciates the time and efforts the City of Chicago and O'Hare International Airport have made to provide the information necessary to assist in the development of Northwest's Certification of Agreement or Disagreement. We appreciate the opportunity to review and comment on your proposed PFC application, as well as your further consideration of our comments.

Sincerely,

Blaine K. Peters
Regional Director, Airport Affairs
612-727-4756

cc: pfcinfo@airlines.org
ORD AAAC
FAA

RESPONSE TO AIR CARRIER COMMENTS

On March 31, 2008, the City notified 46 air carriers serving O'Hare of its intent to apply for FAA approval to impose and use passenger facility charges for the projects described in Attachments B. On May 8, 2008, the City convened a consultation meeting with airlines on the proposed application. Under 14 CFR § 158.23(c)(2), within 30 days following the meeting, each carrier was required to provide the City "with a written certification of its agreement or disagreement with the proposed project." Because the 30th day following the meeting was a Saturday, certifications were required to be filed by June 9, 2008.

Six certifications were received on or before June 9, 2008 from the following carriers:

- Aer Lingus
- ANA-All Nippon Airways
- Continental Airlines
- Delta Air Lines
- Northwest Airlines
- United Air Lines and American Airlines (jointly submitting a single certification).

All certified disagreement with the proposed projects. Five of the six certifications contained reasons for disagreement. The Aer Lingus certificate contained no reasons. "The absence of such reasons shall void a certification of disagreement." 14 CFR § 158.23(c)(2). Therefore, five valid certificates of disagreement representing six carriers were received. The remaining carriers, who filed no certificates, are considered to have certified agreement. 14 CFR § 158.23(c)(3). The carriers who are considered to have certified agreement accounted for 54.7% of O'Hare operations and 33.6% of O'Hare enplaned passengers in 2007.

In accordance with 14 CFR § 158.25(b)(11)(v), the City provides below a summary of comments by carriers in their certifications of disagreement, and states the City's reasons for continuing despite such disagreements.

I. Preliminary Statement.

Two characteristics of incumbent O'Hare carriers make their disagreement with the proposed projects understandable. First, these carriers are focused almost exclusively on the very near term. Second, these carriers have an interest in restricting access to O'Hare by new competitive carriers. Both of these private business interests are different from the City's urgent public interest in continuing with the projects.

1.1 Economic Environment.

The certifying carriers have reduced their schedules and taken other measures, such as disagreeing with this Application, in response to recent economic conditions. They blame their current financial difficulties on high fuel prices and "the challenging economic environment." See, for example, in addition to the certificates of disagreement, United News Release, June 4, 2008; American Airlines Corporate Press Release, July 16, 2008. (Both attached) That is what United, in its News Release, calls the "current market reality." They do not say, because they cannot know, that this economic environment is permanent. If the country ultimately resumes the robust growth of the past, if fuel prices either decline or the economy finds a way to accommodate high fuel prices, the current economic environment will be less "challenging" and air travel will grow with the economy as it historically has.

That is the heart of the disagreement between the incumbent airlines and the City. They would have the City stop OMP development now, and restart it when the "current market reality" improves. That will not work. O'Hare runways take many years to build. The time from conception to commissioning for the first two runway projects is more than seven years. It will take at least 13 years from conception to commissioning to deliver the entire program. Restarting the OMP if it is shut down after completion of Phase I will cause several years of delay and add significantly to its cost. The long time spans needed to develop runways cover many business cycles. During a decade or more, carriers come and go, grow or shrink, thrive or struggle. Through it all, however, O'Hare continues to be a very busy airport beset by long-standing delay, capacity and competitive problems. For years, O'Hare has suffered serious delays at operations levels much less than today's, and much less than projected future levels. See Response 1 below. It takes too long to build runways to allow the City to stop the OMP in response to short-term fluctuations in the economy or the businesses of particular carriers.

Like the airlines, the City cannot foresee the future of fuel prices or the economy. However, history suggests that the economic environment will improve and, as history also shows, air travel will grow with it. Finally, history suggests that any conceivable air transportation system will have O'Hare as a very busy hub.

As for fuel prices, either they will fall, or someone will find a way to make money in commercial aviation in a high fuel price environment. Boeing thinks fuel prices ultimately will settle at about \$70-\$80 per barrel. *Boeing Optimistic Despite Record Oil Prices*, Aviation Week and Space Technology, July 13, 2008. OPEC's president agrees. *Oil Price "Abnormal" but \$US78 Achievable*, Herald Sun, July 30, 2008. (Both attached.) If fuel prices stay high, it will still be possible to provide good airline service profitably. Southwest Airlines, for example, has consistently done it. It may be that the incumbent O'Hare carriers cannot. But someone will, perhaps a carrier such as Virgin America which wants to serve O'Hare but needs access to gates. The business situations of particular carriers and the City's long-term aviation needs are not the same thing.

Financial pressures confronted today by "legacy" carriers lead them to think in the very short term. They are concerned about their ability to pay costs and make a profit in the next few quarters. Airport efficiencies that will be realized several years in the future are beyond their current frames of references, but critical to the City's need to have an efficient airport. The City realizes that one or more incumbent carriers may not survive with their existing structure and management. The City also realizes that investing short-term dollars in capital projects that will provide long-term benefits poses short-term financial challenges to incumbent carriers. The City cannot view O'Hare development with such a short-term focus. Its governmental obligations and the public interest have to be focused beyond the next few quarters, and beyond the specific futures of one or more incumbent carriers. The City has been a transportation hub for more than a century, and there is no reason to expect, given its geographical location, that it will not continue to serve that important national transportation role. It needs to have an airport suited to that role.

1.2 Competition

Incumbent carriers have an interest in continuation of conditions that discourage competition, especially competition by new-entrant low-cost carriers. The OMP Completion Phase projects will, among other things, "provide an opportunity for enhanced competition between or among air carriers," as set forth in Attachment B. 49 USC 40117(d)(2)(C).

Incumbent carriers understandably do not want to pay for capacity increases, delay reductions and gates that will benefit competitors. They stand together in opposition to the projects covered by this Application. The common interest of the two largest carriers is evident from the fact that they filed a joint

certificate, and the similarity of argument and phrasing in other airline certificates cannot have occurred by chance. The incumbent carriers, who control every domestic gate at O'Hare but one, do not want new O'Hare competition. The City, on the other hand, benefits from vigorous competition. The Completion Phase projects will facilitate it.

Comment 1

“[I]t is interpreted that the requirement that PFC-funded projects must qualify as AIP-eligible projects to mandate that PFC-funded projects be limited to those for which and [sic] immediate and justifiable need can be demonstrated or substantiated.” (ANA-All Nippon)

“Delta’s interpretation of the Part 158 is that PFC-funded projects are to be restricted to those programs for which a near term and justifiable definitive need can be demonstrated or substantiated.” (Delta)

“[W]e interpret the requirement that PFC-funded projects also qualify as Airport Improvement Program eligible projects, mandating that PFC-funded projects be limited to those programs for which an immediate and justifiable need can be demonstrated.” (Continental)

“[W]e interpret the requirement that PFC-funded projects be limited to those programs for which an immediate and justifiable need can be demonstrated or substantiated.” (United and American)

“The criteria of ‘immediate and justifiable need’ has not been satisfied.” (Northwest)

Response 1

“Immediate and justifiable need” is not a legal standard for PFC projects. Even if it were, the Completion Phase projects, and therefore their design, satisfy that standard.

No commenting carrier cites a statute, regulation, FAA Order or other authority for the “immediate and justifiable need” standard on which all of their comments depend. That standard does not appear in 49 USC 40117 (PFC authorizing law), 49 USC Part 47 (AIP authorizing law), 14 CFR Part 158 (PFC regulations), 14 CFR Part 152 (AIP regulations), Order 5500.1 (PFC Order), or Order 5100.38C (AIP Handbook). While PFC eligibility refers to AIP eligibility standards to define projects, “AIP funding priorities do not affect project eligibility” for PFCs. Order 5500.1 ¶4-6b. “The PFC statute and regulation do not place any one PFC objective above another in terms of priority. If a project accomplishes any of the PFC objectives and is otherwise eligible for approval, the FAA must approve the project.” Order 5500.1 ¶4-8e. While “adequate justification” is required (49 USC 40117(d)(3)), a showing of “immediate” need is not. Disagreement based on a standard not found in the law is entitled to no weight.

However, the need for the Completion Phase projects is both immediate and justifiable. See Attachments B, Items 5 and 7. According to Bureau of Transportation Statistics data, O'Hare is among the most delayed airports in the United States for both on-time arrival and on-time departure performance. For calendar year 2007, O'Hare ranked 29th out of 32 major airports in arrival performance and 32nd out of 32 airports in departure performance. For calendar year 2006, O'Hare ranked 30th out of 32 major airports in arrival performance and 32nd out of 32 major airports in departure performance (Bureau of Transportation Statistics, Ranking of Major Airport On-Time Arrival Performance Year-to-date through December 2006 and December 2007; Ranking of Major Airport On-Time Departure Performance Year-

to-date through December 2006 and December 2007, Tables 4 and 6). In both cases on-time performance was worse than calendar year 2005, when O'Hare ranked 22nd out of 31 airports in arrival performance and 29th in departure performance. This poor performance continues in 2008. For the first six months of 2008, O'Hare ranked 30th in arrival performance, one rank worse than the first six months of 2007, and 32d out of 32 in departure performance, as in the first six months of 2007. Departure performance for the first six months of 2008 was worse than the next worst airport by a wide margin (4.72% of on-time departures), the widest margin between airports on the entire list. (Bureau of Transportation Statistics, Ranking of Major Airport On-Time Arrival Performance Year-to-date through June, 2008; Ranking of Major Airport On-Time Departure Performance Year-to-date through June, 2008, Tables 4 and 6) This poor performance occurs even though the FAA imposed "Congestion and Delay Reduction" rules at O'Hare (14 CFR Part 93, Subpart B, §§ 93.21 – 93.32 (Congestion Rule)). Copies of the BTS report pages are attached.

At operations levels well below 2007 levels, O'Hare needed immediate new runways. In 2001, the Senate Commerce, Energy, and Transportation Committee "strongly encouraged the City of Chicago and the State of Illinois to reach agreement on airport expansion before September 1, 2001 or, according to congressional leaders, run the risk of Congressional intervention." EIS 1-13 – 1-14. Congress was reacting to chronic O'Hare delay. In 2000, the most recent full year available to the Senate committee, O'Hare had 906,326 operations and was the third most delayed airport in the country. EIS 1-13. In the years just before that it had 898,855 (1999), 888,333 (1998), 890,383 (1997) operations respectively. In 1991, the Chicago Delay Task Force recommended measures to reduce delay, including addition of runways. EIS 1-17. In that year, O'Hare had 808,759 operations. Even with significant reductions in incumbent carrier operations, and even assuming that no other carriers arrive or increase service to take the place of those reductions, O'Hare will have operations levels that inspired demands for immediate action by Congress in 2001 and by the Delay Task Force in 1991. An "immediate" need existed nearly 20 years ago. It still does.

Urgency is found, as well, in the O'Hare Modernization Act. "[I]t is essential that the O'Hare Modernization Program be completed efficiently and without unnecessary delay." 620 ILCS 65/5(a)(6). The OMA was passed in 2003. In 2002, the last year available to the General Assembly when it acted, O'Hare had 901,703 operations. If the OMP was immediately needed in 2002 with 901,703 operations, it is immediately needed even with the announced reductions in carrier schedules.

While commissioning of the Phase 1 airfield will improve O'Hare's operational performance, the Inspector General of the U.S. Department of Transportation correctly noted in its 2005 report that "both Phase 1 and Phase 2 must be completed to get the full benefit of the OMP" (USDOT IG's Report on Chicago's O'Hare Modernization Program, July 21, 2005, page 15). At the time, the USDOT Inspector General noted that "If Phase 2 is not completed as planned, the full benefit of the OMP in reducing the average time of delay (down to an average of 5 minutes per flight by 2013) and increasing capacity (an average daily increase of 419 departures and arrivals combined) will not be realized." (USDOT IG's Report on Chicago's O'Hare Modernization Program, July 21, 2005, page 15). The Inspector General noted that "if Phase 2 is not completed, FAA may have to re-implement administrative controls that could again limit demand and inhibit competition at O'Hare" (USDOT IG's Report on Chicago's O'Hare Modernization Program, July 21, 2005, page 16).

Comment 2

"Prior to the City's application being filed, several airlines urged the City to only seek funding for a significantly smaller amount that was truly necessary at this time and to submit a large application, as deemed appropriate, after the completion of the revalidation exercise. Unfortunately, the City

did not accept the more modest and financially prudent approach, thus forcing the Airlines to oppose this application.” (Continental; United and American)

Response 2

The airlines do not want the Completion Phase to proceed on schedule. The City has determined that it must proceed as quickly as possible. Airline interests and City interests are different. See Preliminary Statement.

In March, 2008 the City outlined an approach to the airlines to reduce the size of the initial application, but noted such a reduction would only defer the remaining amount until early 2009. Given the time required for PFC approval and compliance with the City's procurement rules, a smaller PFC amount, or delay of part of it, delays the Completion Phase, which is unacceptable to the City. The airlines did not accept the City's alternative approach.

Comment 3

“[T]he conceptual airfield plan, although approved in 2001 by the FAA, has not been fully reanalyzed in light of the significant change in airfield operations or demand since that time. Until a full and robust analysis of the potential scope, cost, implementation and plan of finance of any further airfield development has been completed, it is premature and inappropriate to commit hundreds of millions of dollars (\$191,588,175) in PFC funding toward the completed design of such airfield projects.” (ANA-All Nippon, Continental, United and American, Northwest)

“The request to tie up nearly \$200M in PFCs at this juncture, results in a premature and impulsive grab for funds much needed for capital improvement projects.” (Delta)

Response 3

The FAA approved the airport layout plan in 2005, not 2001, and the approval was not “conceptual.” It was full unconditional regulatory approval of a detailed airport layout plan. The City unveiled its proposed OMP concept in 2001, which was then analyzed and refined by the City and the airlines as part of the planning process, and by state and federal agencies in the regulatory process. By the time of the September 2005 ROD, the FAA had extensively examined every aspect of the OMP. In the airfield/airspace simulation analyses alone, FAA “invested over 2000 hours reviewing assumptions, draft results, animations, and final results. The FAA review was conducted by an Air Traffic Work Group consisting of: FAA Management and National Air Traffic Controller Association, representatives from O'Hare Tower, Chicago Terminal Radar Approach Control Facility, and the Chicago Center; FAA Airports Division; and the FAA's TPC.” ROD 29.

Airline industry changes, and changes in current operating conditions at O'Hare since the FAA issued the ROD in 2005, do not alter the continued validity of the FAA's analyses. Those airfield operating changes involve primarily different use of operating configurations and an increase in average in-trail separation for arrivals. Unusual storms in 2007 (Instrument Meteorological Conditions or IMC weather accounted for approximately 15.1 percent of the daytime hourly observations according to the FAA's ASPM database in 2007 compared to a projected 9.3 percent based on a 1991-2000 historic weather average) occurred. These factors disproportionately degraded the performance of the existing airfield layout compared to the completed OMP airfield, thus increasing the operational benefit of the full OMP airfield even if these factors were to become permanent changes in the way the Airport operates. If the analyses were to be done again using current airfield performance as the baseline, operational benefits attributed to the full OMP airfield would be greater than originally projected.

Delta's characterization of the City's PFC application as "impulsive" is wrong. The plan of finance including PFCs appears in the Master Plan and has been available to the airlines for several years. The City has held, and continues to hold, extensive negotiations with the airlines with respect to the Completion Phase. Throughout those negotiations the City has made clear that it intends to proceed with the Completion Phase, preferably with airline agreement. The City has also made clear that it will proceed with the Completion Phase even without airline agreement, and that ideally PFCs will be available as one of the sources to pay for it. See Attachment F-2.

Comment 4

"Insufficient detail was provided at the PFC Consultation and thereafter to substantiate the definitive need for a PFC encumbrance of this magnitude. What was provided amounted to a conceptual plan. The City was remiss in providing a full and robust analysis of scope, costs, schedule, completion and a plan of finance relative to the airfield development." (Delta)

Response 4

The City provided, and continues to provide, extensive information on project scope, cost, implementation, and plan of finance. It provided all the information required by 14 CFR 158.23. The City and the airlines meet regularly and exchange such information. An airline representative sits in the heart of the OMP, a moment away from the Executive Director, Program Manager, Master Civil Engineer, Construction Manager and all other OMP activities. He regularly attends OMP meetings, seeks and obtains information, and is fully aware of the details of the OMP. Project specifications, drawings, schedules and technical information are openly posted and available to him. Project scope and cost were clearly and precisely defined for the airlines, as they are in this Application. The airfield projects to be designed are described in detail on the ALP and in the administrative record supporting the EIS. The airlines know, and have long known, exactly what and where they are, their purpose, their operating configurations, taxi routes, and their relation to other airfield structures such as airline gates. The design process was described in the notice and is, in any event, well-known to airlines. Similarly, project implementation and the plan of finance have been provided to the airlines. Airlines have the City's plan for project implementation and finance.

Additional information about cost, implementation and finance of Completion Phase construction (scope is already clear) requires completion of the design effort to be funded with these PFCs. This design project includes detailed cost estimation, planning for temporary airfield operations during construction, and planning for relocation of facilities. The airlines are already working closely and cooperatively with the City on construction phasing and maintaining operations during Completion Phase construction.

Comment 5

"The projects proposed for funding are further deemed to be premature in light of lack of airline approval required under the existing long term Lease and Use Agreement Section 8.06 to secure funding for and commencement of any capital improvement projects." (ANA-All Nippon, Continental, American and United, Northwest)

"[T]he airlines have not yet approved Phase II of the O'Hare Master Plan for which this airfield design is associated with [sic]. In light of this fact, the request for PFC funding is inappropriate and in conflict with the ORD Lease and Use Agreement Section 8.06." (Delta)

Response 5

There is no conflict with Section 8.06 (or any other provision) of the Use Agreement. The Airline Parties have no rights under the Use Agreements, or otherwise, to approve or control O'Hare capital

development. Their right is limited to approval of certain GARBs. If the City intends to charge the Airline Parties for GARB debt service during the term of the Use Agreement, they have certain GARB approval rights. The Use Agreements terminate on May 18, 2018. GARBs issued now with all of their debt service payable after that date are not subject to Airline Party approval. See Attachment F-2.

The Use Agreements also allow the City to issue GARBs without Airline Party approval for specific types of projects. For example, GARBs may be issued without airline approval for capital projects "necessary to comply with any valid rule, regulation or order of any Federal or state agency." (Use Agreement § 8.02(a)(i)(3)).

The City is currently in discussions with airlines about a plan of finance for the Completion Phase projects. The City intends to use GARBs to fund a substantial share of Completion Phase costs, supplemented by AIP, PFC, and third party financing. The City has the legal authority to implement a funding plan that does not require airline approval, and may elect to do so. See Attachment F-2.

Contrary to the airline certificates, a request for PFC funding does not conflict with any Use Agreement provision. Federal law prohibits airline control over applications for, and use of, PFCs. 49 USC 40117(f)(1). The Use Agreement recognizes that limitation. § 8.01(a)(iv).

The City is prepared to move forward with a funding plan for construction without airline support. It prefers a mutually agreeable plan, and the City hopes that ongoing negotiations are productive in reaching an agreement. However, the benefits of the OMP are of such great importance to the City that the City will use funding options that will allow the program to move forward if there is no agreement. The City believes that, under either funding scenario, it is prudent to use PFC's to fund design of these projects.

Comment 6

"The City of Chicago has not established that there is the necessary and appropriate demand for an additional terminal to support operations at the Airport. The proposed location on the far west side of the airport, separated by the central terminal complex by active taxiways, is ill-conceived, as it does not support an operation in which a large percentage of passengers use O'Hare as a connection hub." (ANA-All Nippon)

"The progression with the Western terminal area is inconsistent with intent of the ROD especially in light of the recent industry-wide capacity reductions." (Delta)

"No Airline or other Airport tenant has publicly expressed interest in or made a commitment to lease any part of this facility. Additionally, both hub carriers have stated that they are not interested in the facility for their use . . ." (Continental, United and American, Northwest)

Response 6

Development of additional gates will occur as demand dictates. Planning the western complex now is necessary. Incumbent carriers control nearly every domestic gate at O'Hare. New entrants who want to compete with incumbents have to sublease domestic gates from them. Gate shortage significantly constrains new O'Hare service by competitors to incumbent carriers. The City needs a well-developed plan for new gates.

A key component of the western terminal area is western access to O'Hare. "Public roadway access through the existing western boundary of O'Hare to passenger terminal and parking facilities located inside the boundary of O'Hare and reasonably accessible to that western access is an essential element of

the O'Hare Modernization Program. That western access to O'Hare is needed to realize the full economic opportunities created by the O'Hare Modernization Program and to improve ground transportation in the O'Hare area." (O'Hare Modernization Act, 620 ILCS 65/5(a)(5); ROD 5). The Illinois Department of Transportation is currently leading a comprehensive study of regional transportation improvements. Providing additional definition of the western access component of the western terminal area to coordinate effectively with regional transportation organizations is a key aspect of this planning effort.

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May 8, 2008

BY MAIL AND EMAIL

Michael Zonsius
City of Chicago, Department of Aviation
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Chicago, Illinois 60666
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Re: April 3, 2008 Notice of Proposed Application to FAA for Authority to Impose Passenger Facility Charges (PFC), and to Use PFC Revenues, at Chicago O'Hare International Airport

Dear Mr. Zonsius:

INTRODUCTION

On April 3, 2008, Chicago's Department of Aviation ("Chicago") issued a Notice inviting comments on a proposal (the "PFC Proposal") to apply to the Federal Aviation Administration ("FAA") for authority to impose and use an additional \$201 million in Passenger Facility Charges ("PFC") at O'Hare International Airport for further airside and terminal design activities related to Phase 2 of the O'Hare Modernization Program ("OMP").¹

¹ Notice of the City of Chicago, Illinois, Department of Aviation regarding Proposed Application to FAA for Authority to Impose a PFC, and to Use PFC Revenue, at Chicago O'Hare International Airport.

The Village of Bensenville, Elk Grove Village, St. John's United Church of Christ, Helen Runge, Shirley Steele, Bernardo Flores, Gail Flores, Robert Rackow, Arlene Benson, William Baird, Roberta Baird, and Nelson Marrero (collectively, the "Commenters") submit these preliminary comments in opposition to the PFC Proposal.

The comments are necessarily preliminary because Chicago has failed to provide information and documents in support of the PFC Proposal to demonstrate compliance with the statutory and regulatory requirements and Chicago has refused to timely and adequately respond to Commenters' Freedom of Information Act ("FOIA") requests for information and documents relating to the PFC Proposal.

The Commenters strongly protest Chicago's failure to timely and fully respond to their FOIA requests for documents relating to the PFC Proposal. Counsel for the Commenters submitted a FOIA request on April 3, 2008, the same day Chicago issued its Notice requesting comments. Counsel emphasized that given Chicago's announced May 8, 2008 deadline, it was essential that Commenters be given access to the documents relating to the PFC Proposal immediately. That did not happen:

- A. Twenty days later on April 23, 2008 Chicago produced 37 pages of material — a production which Chicago itself acknowledged was incomplete.
- B. Twenty-six days later, on April 29, 2008, approximately a week before the Chicago's announced comment closing date, counsel for the Commenters received only 14 pages of cost data, most of which were redacted².

² The City's redactions are improper and unlawful. The City will be required to provide these cost data to the airlines and to the FAA. There is no basis in law or policy why other interested parties should be prohibited from seeing critical cost information that goes to the heart of the PFC Proposal.

C. On May 5, 2008, Chicago advised Commenters counsel that the remaining “non-exempt³” documents relating to the PFC application would be made available on May 19, 2008 — ten days after the May 8 comment deadline.

The City’s foot-dragging, stonewalling, and failure to provide Commenters with crucial information and documents relating to the PFC proposal have adversely impaired the Commenters’ ability to provide meaningful comments on the PFC Proposal, fundamentally undermining the integrity of the notice and review process.

COMMENTERS’ OBJECTIONS

I. Summary of Errors In Chicago Application

The materials submitted by Chicago fail to demonstrate that the proposed Phase 2 Airfield and Western Terminal (the subject of the \$201 million PFC application) will “preserve or enhance capacity, safety, or security of the national air transportation system” as required by 49 U.S.C. §40117(d)(1)(A) and 14 CFR §158.15, or that there is “adequate justification” of the Phase 2 Airfield and Western Terminal as required by §40117(d)(3). In its April 3 notice, Chicago relies upon forecasting, computer modeling, environmental impact information, and aviation performance and benefit claims prepared for what the FAA called “Alternative C”, a/k/a the “Total Master Plan” or the “Preferred Alternative”. (See Exhibit A attached hereto). Yet Chicago has provided absolutely no data or analysis of the aviation performance, aviation benefits, or environmental impact of the “airport development project” for which the \$201 million PFC authorization is sought — *i.e.*, the so-called “OMP Airfield” and the Western Terminal.

³ Chicago has no right to withhold documents relating to its PFC application for the federal government — documents to which Commenters are entitled to access to prepare meaningful comments on the federal PFC application — on the ground that these documents are “exempt” under state FOIA law.

A. Missing Evidence As To The “Airport Development Project” For Which The \$201 Million PFC Authorization Is Sought (“OMP Airfield” And The Western Terminal”).

Without specific data and empirical evidence as to the aviation performance, aviation benefits, and environmental impacts of the specific “airport development project” for which the \$201 million PFC authorization is sought (“OMP Airfield” and the Western Terminal”) Chicago has not and cannot provide the legally required justification for the requested PFC authorization. And Chicago has provided no such data and empirical evidence. Among the missing elements of evidence are:

1. Failure to Develop a Realistic Current Forecast of Aviation Demand At O’Hare. Chicago has failed to produce a current 2008 enplanement and operations forecast for O’Hare to reflect and incorporate the massive and fundamental structural changes in the airline industry since the 2002 forecast used by FAA to approve the Airport Layout Plan in 2005, and changes since the forecast used by Chicago (to the year 2032) in its September 27, 2005 Supplemental Benefit-Cost Analysis. As a result of the seismic and long-term changes to the airline industry, including long-term capacity reductions, mergers and consolidations, bankruptcies, airline worker layoffs, the empirical assumptions behind those earlier forecasts are no longer valid and can no longer be relied on to justify the OMP or the "Total Master Plan". A current and realistic 2- year forecast (the 20 year period from the time the project opens) would likely produce dramatically different quantitative impacts and values both as to aviation performance, delays, economic impacts and environmental impacts (see discussion below).

2. Failure To Produce Any Evidence Of The Aviation Performance And Environmental Impacts Of The Proposed “airport development project” For Which The \$201 Million In PFC Funding Is Sought. Whatever aviation forecast is used, Chicago has failed to produce evidence as to the aviation performance (including claimed economic benefits) and environmental impacts of the “airport development project” for which the \$201 million PFC authorization is sought (“OMP Airfield” and the Western Terminal”). The TAAMs computer modeling for the 2005 ROD and related computer modeling of noise impacts was based on the complete terminals and runway configuration of the Total Master Plan — which includes Terminal 4, Terminal 6, the Concourse K extension, the Western Satellite Terminal and the

underground people mover — none of which are included in the “airport development project” Chicago’s PFC Proposal.

Without these “Total Master Plan” components in place, the runway utilization of the “airport development project” for which the \$201 million PFC authorization is sought (*i.e.*, the “OMP Airfield” and the Western Terminal”) is likely to be significantly different than that assumed for the "Total Master Plan"; and the aviation performance and environmental impacts will be similarly different. For example, if either the FEIS 2018 forecast or Chicago’s 2005 Supplemental Benefit-Cost 2032 forecast is applied to the “airport development project” for which the \$201 million PFC authorization is sought (*i.e.*, the “OMP Airfield” and the Western Terminal”), the noise impacts off the runways are likely to be significantly different than the environmental impacts shown in the 2005 FEIS and ROD for the "Total Master Plan".

3. Failure To Produce A Completion Date And Applicable Period Of Analysis For Economic And Aviation Performance Well As Environmental Impacts. As noted in the Objections filed by these Commenters on Chicago’s 2007 application for \$1.282 billion in PFCs⁴, Chicago based its justification of the “Phase 1 Airfield Project” and the "Total Master Plan" on Chicago’s September 2005 Benefit-Cost Analysis and the FAA’s November 2005 Letter of Intent (LOI) Analysis and Review. Both the September 2005 Benefit-Cost Analysis and the FAA’s November 2005 Letter of Intent (LOI) Analysis and Review predicate their analysis and claims as to the purported aviation benefits and performance of the “Phase 1 Airfield Project” and the "Total Master Plan" based on an aviation forecast that extends 20 years from the date of the opening of the “airport development project” — *i.e.*, depending on the “airport development project” (“Phase 1 Airfield Project” or "Total Master Plan") – to the year 2028 or 2032. Yet Chicago and the FAA have failed to conduct equivalent environmental impact analyses for the equivalent time frames.

The same error is being repeated here with respect to the “airport development project” for which the \$201 million PFC authorization is sought (*i.e.*, the “OMP Airfield” and the Western Terminal”). Chicago fails to provide a completion date (*i.e.*, completion of

⁴ Commenters hereby adopt and incorporate by reference, in these comments on the \$201 million PFC application, the OBJECTIONS TO CHICAGO’S APPLICATIONS FOR FAA AUTHORITY TO IMPOSE AND USE PASSENGER FACILITY CHARGES AT CHICAGO O’HARE INTERNATIONAL AIRPORT and the affidavits, declarations, and exhibits incorporated therein.

construction/start of operation) for a base year of analysis for this “airport development project” and fails to identify the equivalent 20 year period of analysis for either justifying economic or aviation performance or assessing environmental impacts of the PFC Proposal.

4. Failure To Disclose The Current Cost And Financing Plan For The “Airport Development Project” (i.e., the “OMP Airfield” And The Western Terminal”). Chicago has failed to show the cost of the “airport development project” for which the \$201 million PFC authorization is sought (“OMP Airfield” and the Western Terminal”) and has failed to demonstrate the financial viability of the “OMP Airfield” and the Western Terminal” “airport development project” as required by FAA PFC Order 5500.1.

5. Failure To Demonstrate Delay Reduction Performance Of The “Airport Development Project” (“OMP Airfield” And The Western Terminal”). Chicago has failed to demonstrate the delay reduction performance of the “airport development project” for which the \$201 million PFC authorization is sought (“OMP Airfield” and the Western Terminal”). There is no TAAMs or other computer performance analysis of the delay reduction or capacity enhancement performance anywhere in the documentation cited by Chicago as to the aviation performance of this “airport development project” (i.e., the (“OMP Airfield” and the Western Terminal”).

6. Failure To Demonstrate Balance Between Terminal Capacity And Runway Capacity. Chicago has failed to demonstrate how the “airport development project” for which \$201 million PFC authorization is sought (“OMP Airfield” and the Western Terminal”) will bring the “capacity of terminal and support facilities” “in balance with the capacity of the Airfield”. (Chicago’s April 3 2008 notice, p.3). Chicago’s Master Plan and the 2005 FEIS and ROD declared that more than 2.5 million additional square feet of terminal space (including Terminal 4, Terminal 6, the Concourse K extension, the Western Satellite Terminal and the underground people mover) were needed just to meet the traffic forecast used by FAA and Chicago for the year 2018.

If Chicago persists in relying on the outdated 2003 forecast — as opposed to preparing a current more realistic forecast — there is no evidentiary basis for Chicago’s claim that building the “OMP Airfield” and adding just the “Western Terminal” will bring the “capacity of terminal

and support facilities” “in balance with the capacity of the airfield”. Chicago has failed to demonstrate such balance:

- A. Without the missing added terminals there is no demonstration that O’Hare will have the required terminal capacity Chicago and FAA stated Chicago would need to meet even the 2018 demand which was the basis of the 2005 FEIS and ROD;
- B. Conversely, if Chicago has no assurance of building the missing terminals, the “OMP Airfield” appears to be more than is necessary to balance airfield capacity with the limited additional terminal capacity provided by the Western Terminal.

Further, since Chicago is relying on aviation demand forecasts that extend 20 years from the date the “airport development project” opens as the basis of its purported justification for PFC authority on aviation demand forecasts, Chicago has yet to identify the terminal capacity needed for the end years of the period used for economic justification. For example, in its claims of economic benefit for the “Phase 1 Airfield Project” and the “Total Master Plan”, Chicago used the years 2028 and 2032 respectively as the years to which to project aviation demand and claim economic benefits. Yet nowhere in the documentation for the “Phase 1 Airfield Project” and the “Total Master Plan” is there any discussion or analysis of the terminal needs (*e.g.*, square footage and gates) required to accommodate such traffic forecasts. Similarly here, Chicago has failed to identify the terminal needs beyond the year 2018 — despite the fact that much more terminal space will be needed in the years 2028, 2032, and beyond, than provided by the terminals shown in the “Total Master Plan” (and certainly more will be needed in 2018 and in 2032 and beyond apart from just the Western Terminal).

7. Protection of St. Johannes Cemetery. Because the runways of the “OMP Airfield” are more than are needed to balance with the limited terminal capacity of the existing terminals and the Western Terminal, there is certainly no need to destroy St. Johannes Cemetery. Chicago’s purported need to destroy St. Johannes was predicated on the claimed need to have runways that were “in balance” with all of the terminals of the “Total Master Plan”. Absent a demonstration by Chicago that these terminals are actually going to be built, there is no need for a runway that will destroy St. Johannes when the purported need for that runway — and the corresponding claim that it must run through St. Johannes — was predicated on terminals that will likely never be built.

8. Failure To Demonstrate That The \$201 Million Is Needed For “Design” Work. The estimate of \$200 million for purely “design” activities for Runway 9C-27C, Runway 10R-28L, extension to Runway 9R-27L and related enabling projects (e.g., Taxiway Lima-Lima), and the Western Terminal is exorbitantly high to encompass just “design” work. Airports have spent that amount to *construct* new runways.

B. Missing Evidence As To The "Total Master Plan."

Alternatively, if Chicago is relying on the Total Master Plan (*i.e.*, the “Alternative C” a/k/a “Preferred Alternative”) which was the subject of the 2005 FAA FEIS and ALP Record of Decision — as the basis for claimed justification of the “airport development project” for which the \$201 million PFC authorization is sought (“OMP Airfield” and the Western Terminal”) — Chicago’s purported demonstration of justification under the PFC statute is equally flawed:

1. Failure To Demonstrate A Time Line For Construction And Completion Of The FAA Approved ALP (*i.e.*, the "Total Master Plan"; a/k/a “Alternative C”; “Preferred Alternative”). As noted above, nowhere in the FAA’s EIS or ALP ROD is there any analysis or discussion of the aviation performance of the “airport development project” or environmental impacts of the “airport development project” for which the \$201 million PFC authorization is sought (“OMP Airfield” and the Western Terminal”). The 2005 FEIS and FAA ROD — and the 2014 schedule completion schedule as well as all the performance and environmental impact claims — was for the "Total Master Plan" (including Terminal 4, Terminal 6, the Concourse K extension, the Western Satellite Terminal and the underground people mover).

Nowhere in Chicago’s documentation as to the “airport development project” for which the \$201 million PFC authorization is sought (*i.e.*, the “OMP Airfield” and the Western Terminal”) is there any schedule for design and construction of these projects of the "Total Master Plan" — component projects which Chicago and FAA said were critical to meet 2018 demand and were to be completed by 2014. Yet Chicago has been erroneously claiming to the news media that Chicago is adhering to the 2014 completion date set forth in the FEIS. Chicago has swept under the rug any schedule and commitment to complete several billion dollars of components of the "Total Master Plan" (a/k/a “Alternative C”; “Preferred Alternative”; Airport Layout Plan.”) — multi-billion components which FAA said were necessary and which Chicago

has falsely told FAA and the public would be completed by 2014. Further, Chicago is breaching and abandoning even the 2014 schedule set forth in the FEIS by proceeding (without any explanation or justification) which calls for construction of the balance of the "Phase 1 Master Plan" (including the Western Satellite Terminal, the Concourse K extension, and the People Mover) — before proceeding with any need for or construction of the southernmost Runway 10R/28L/.

2. Failure To Produce A Current Cost Estimate For The "Total Master Plan".
In 2005 the FAA stated that the total cost of the "Total Master Plan" (a/k/a "Alternative C"; "Preferred Alternative"; Airport Layout Plan.") was \$14.29 billion in 2004 dollars. Nowhere has Chicago produced either a current cost estimate for the "Total Master Plan" or the "airport development project" for which the \$201 million PFC authorization is sought ("OMP Airfield" and the Western Terminal"). If Chicago is relying on claimed benefits for the "Total Master Plan" as the basis of its purported justification for the "airport development project" for which the \$201 million PFC authorization is sought ("OMP Airfield" and the Western Terminal"), Chicago should disclose the current cost of the "Total Master Plan".

3. Failure To Demonstrate Funding. As pointed out in Commenters' June 2007 Objections, Chicago has yet to show how it can fund the cost of the "Total Master Plan" — or indeed even the "airport development project" for which the \$201 million PFC authorization is sought ("OMP Airfield" and the Western Terminal") — without PFC funds and without anticipated AIP funds. FAA regulations require the applicant for PFC funding to demonstrate the financial viability of the project (here the "OMP Airfield" and the "Western Terminal") including providing details as to the estimated total project cost as well as the "source and amount of other funds, if any, needed to finance the project". FAA Order 5500.1 ¶ 4-19. Chicago is required to show such information not only for the project it is proposing (the "OMP Airfield" and the "Western Terminal") but — since Chicago is relying on the "Total Master Plan" for its Proposal's justification — Chicago must also make this demonstration for the "Total Master Plan".

4. Failure To Show The Environmental Impacts Of The "Total Master Plan".
As pointed out in Commenters' June 2007 Objections to the \$1.282 billion PFC application (incorporated herein by reference), Chicago has yet to disclose the environmental impacts of the

"Total Master Plan" — especially for the period of time used to claim economic justification for the "Total Master Plan" — *i.e.*, the year 2032. Again, Chicago (and FAA in its analysis) should be required to disclose and assess the environmental impacts for the project for which PFC funding is sought — be it the "Total Master Plan" or the "airport development project" for which the \$201 million PFC authorization is sought ("OMP Airfield" and the Western Terminal") — for the same period used to claim economic benefits and performance.

5. Failure to Demonstrate the Economic Benefits of the "Total Master Plan".

As pointed out in Commenters' June 2007 Objections to the \$1.282 billion PFC application, Chicago has failed to produce credible and reliable evidence as to the claimed economic benefits of the "Total Master Plan". Without such evidence Chicago has no basis to claim that Chicago has demonstrated "adequate justification" for the "Total Master Plan" as required by the PFC statute.

II. The Air Transportation Industry Is Undergoing An Unprecedented Transformation, Which Invalidates The Data And Forecasts Used By Chicago To Justify The Need For The "Airport Development Project" For Which The \$201 Million PFC Authorization Is Sought ("OMP Airfield" And The "Western Terminal").

As discussed above, even accepting, *arguendo*, the out-of-date and invalidated demand assumptions made by Chicago in its proposed application for the \$201 million PFC authorization for the "airport development project" ("OMP Airfield" and the Western Terminal") for which the \$201 million is sought, the PFC Proposal request contains several fundamental flaws. The Chicago proposed "airport development project" ("OMP Airfield" and the Western Terminal") simply has no evidence to support it and ignores the very schedule and facilities (*e.g.*, added terminals 4, 6, Western Satellite, people mover) which Chicago and FAA claimed (in the FEIS and 2005 ALP ROD) were essential to be constructed by 2014 to meet 2018 demand.

But continued use by Chicago and FAA of flawed demand assumptions can no longer be excused in light of the fundamental and unprecedented transformation of the air transportation industry which has occurred — and is continuing to occur.

The City continues to rely on the demand analyses supporting the 2005 EIS, but that analysis can no longer be relied on to support the project, given the massive transformation

occurring in the airline industry, a transformation which in the last few months has resulted in the bankruptcy of and/or cessation of service by eight U.S. airlines⁵, across the board capacity reductions and employee layoffs throughout the rest of the industry, and merger proposals.

The City and FAA based their 2005 analysis of the OMP on the FAA's 2002 Terminal Area Forecast ("TAF"). Since then the airline industry has undergone historic changes at multiple levels. The industry attempted to rebuild in the aftermath of the September 11th terrorist attacks – an event of such magnitude and chilling effect that passenger demand fell off dramatically, services were greatly reduced, security fees increased substantially, airlines lost billions of dollars, airline employee pension funds were eliminated, and hundreds of thousands of employees in the airline and related industries were laid off.

In the intervening years, numerous airlines were forced to reorganize in bankruptcy, including United Air Lines, US Airways (twice), PSA Airlines, Piedmont Airlines, ATA, Hawaiian, Aloha, Midway, Delta Air Lines, Northwest Airlines, Comair, and Mesaba Airlines. A number of U.S. carriers outright ceased operations in 2002, 2003, and 2006, including National Airlines, Midway, and Independence.

The FAA's EIS and the Record of Decision in September 2005 were premised on an assumption of an industry rebound and forecasts of continued growth in the industry. However, the facts are otherwise. The deterioration in the industry has not only continued it has accelerated, particularly in the last few months due to a number of factors including the Iraq War, Middle East tensions, escalating fuel costs, a substantial U.S. economic downturn, the credit crisis, and a greatly devalued dollar. In the last several months, several U.S. carriers have

⁵ ATA, Aloha, EOS, Skybus, MaxJet*, Champion, Big Sky, and Frontier.

precipitously ceased operations without little or no warning (e.g., Aloha, ATA, Skybus, Maxjet, EOS, Champion⁶, Big Sky), or filed for bankruptcy but remained operating (e.g., Frontier).

The two hub carriers at Chicago O'Hare have not been immune from the challenges confronting this fragile industry. For example,

- **United** is reducing domestic mainline capacity by 9% and eliminating 30 aircraft from its domestic mainline fleet later this year.⁷
- United has announced that it is aggressively looking for a merger partner and had been in discussions with Continental (apparently called off) and US Airways.
- **American** is reducing domestic capacity by 3.6% in 2008.⁸

Indeed, no segment of the passenger air transportation industry has gone unscathed in this drastically-changed environment. Low-cost carriers and other legacy network carriers are also reducing capacity and/or delaying aircraft deliveries.

- “**Delta** now expects system capacity for the second half of 2008 to be down 0-2% compared to 2007, with domestic capacity down 9-11%. . . . As a result of the capacity reduction, [Delta] is removing 15-20 mainline and 60-70 regional jet aircraft from its operations by the end of 2008.”⁹
- “In September, after peak summer travel concludes, **Northwest** will reduce its scheduled domestic system capacity by approximately five percent versus the 2008 business plan. This reduction will entail the removal from service of 15 to 20 additional aircraft.”¹⁰
- “**Continental** plans to remove from service an additional 14 older, less fuel efficient 737-300 aircraft as leases expire on those aircraft from September 2008 to April 2009. These 14 737-300s are in addition to the 34 737-300s and 500s that

⁶ Champion has announced that it will cease operations on May 31, 2008.

⁷ *United Cuts Q4 Capacity Further as Losses Deepen*, Aviation Daily, at 1 (April 23, 2008).

⁸ *AMR Corporation Reports First Quarter Net Loss of \$328 Million*, American Press Release (April 16, 2008).

⁹ *Delta Air Lines Reports March 2008 Quarter Financial Results*, Delta Press Release (April 23, 2008).

¹⁰ *Northwest Airlines Reports First Quarter 2008 Results*, Northwest Press Release (April 23, 2008).

were already planned to be removed from service in 2008 and 2009. . . . As a result of record high fuel prices, a weakening economy and a weak dollar, Continental plans to reduce domestic mainline capacity 5.0 percent on an annual run-rate basis beginning this fall.”¹¹

- “**JetBlue** is . . . reducing its year-over-year capacity by 2.8% in the fourth quarter for the first negative growth period in the airline’s history.”¹²
- “**AirTran** is suspending its growth plans entirely beginning in September and lasting at least through 2009.”¹³

The City’s own data for O’Hare operations confirm this trend. From January to March 2008, 9% fewer passengers flew through O’Hare and 5.3% fewer flights were operated there. *See Traffic Slows at O’Hare, Crain’s Chicago Business* (April 28, 2008); *see also* City of Chicago, Monthly Operations, Passengers, Cargo, Summary by Class for March 2008 (April 23, 2008).¹⁴

Yet, Chicago disregards its own recent data (showing year-over-year decreases in operations and enplanements), (pretending that the data showed increases in operations and enplanements year-over-year at a far greater pace than originally projected rather than these substantial declines).

This declining trend in operations is projected to continue.

¹¹ *Continental Airlines Announces First Quarter Net Loss, Continental Press Release* (April 17, 2008).

¹² *JetBlue Tries Something New: Shrinking Instead of Growing, Aviation Daily*, at 2 (April 23, 2008).

¹³ *AirTran Suspends Growth Plans to Adapt Faster than Rivals, Aviation Daily*, at 2 (April 23, 2008).

¹⁴ Available at <http://www.flychicago.com/statistics/airportstatistics.shtm>.

Mr. Michael Zonsius
May 8, 2008
Page 14

Yet, despite these unequivocal data, projections, and trends, Chicago continues to proceed as if nothing has changed, much less something as historic, unprecedented and long-lasting as the developments described above.

Chicago's CFO represents the City's continuing "ignorance is bliss" posture; in responding to carriers about this PFC Proposal just a few weeks ago, he proclaimed: "We believe that these FAA analyses [from the agency's review of the OMP] provide the information you are seeking in regards to the operational benefits provided by the OMP to airport users. *We [the City] have no reason to expect that the cost and financial analysis performed for the FAA has changed materially since it was done.*" (Letter of P. Volpe, City CFO, to American Airlines and United Air Lines (dated March 20, 2008) (*see* OMP40408-0031) (emphasis added).) The City's head-in-the-sand denial of the changes which are now occurring in the airline industry defies reality.

In sum, it can hardly be disputed that the airline industry is undergoing fundamental, sweeping, and unprecedented changes as carriers confront oil/fuel prices at historic highs, a significant economic downturn, very low consumer confidence, a greatly devalued dollar, suppressed passenger demand, and ever-increasing air transportation-related taxes and fees. The PFC Proposal, however, takes none of this into account. Instead, it simply parrots the justifications it has previously invoked over the years *See* PFC Proposal, at (ii). But, merely reciting those same claims — for which there is no evidence as to the "airport development project" for which the \$201 million PFC authorization is sought ("OMP Airfield" and the Western Terminal") — does not substitute for a substantive demonstration. This, Chicago has failed to do.

Simply put, the unprecedented changes to the airline industry and the underlying economy completely invalidate the delay/capacity forecasts upon which the OMP – including the Phase 2 projects at issue here – are premised. For Chicago to proceed with this PFC Proposal based on such data and forecasts completely divorced from the current (and far different) reality would be improper and inappropriate.

III. Failure To Demonstrate Compliance With The Requirements Of The PFC Statute And Implementing Regulations.

As summarized in Part I above, Chicago has failed to demonstrate that the “airport development project” for which the \$201 million PFC authorization is sought (“OMP Airfield” and the Western Terminal”) meet the statutory and regulatory requirements of the PFC statute and implementing regulations.

As discussed above there has been no TAAMs modeling and calculations of aviation benefits for the specific Phase 2 Airfield or Western Terminal Projects which are the subject of the PFC Proposal. There is simply no basis or evidence in the administrative record for the ALP or LOI (or anywhere else) for Chicago’s claim of aviation benefits for the specific Phase 2 Airfield Project or Western Terminal Project at issue here. Without such evidence, the statutory and regulatory prerequisites for PFC authorization under 49 U.S.C. §§ 40117(b) & (d) and 14 C.F.R. §§ 158.15 & 158.17(b) are not met.

Further, Chicago’s dubious justifications and claims of “significant contribution” for the higher \$4.50 PFC level in the PFC Proposal are based on what are now wholly outdated data and inaccurate forecasts developed on assumptions and information from a world that no longer

exists.¹⁵ Thus, they have no legitimate application to the projects currently at issue in the PFC Proposal.

The \$200 million PFC Proposal covers design projects for the “remaining airfield elements of the [OMP]”, *i.e.*, Phase 2 projects. The FAA’s PFC Order states that the statutory mandate for “adequate justification” requires: a) that the project be “cost-effective” and b) that the economic benefits must be “in proportion” to the costs of the project and that the benefits “not be disproportionately less than project costs”. FAA Order 5500.1 *Passenger Facility Charge*, Par 4-8:

..[T]he FAA *must conclude* that the capacity improvements attributable to a project are *justified in proportion to the cost of the project*. In some cases, the *cost of a project may be so large as to raise reasonable question about the value of the proposed capacity benefits*.

FAA Order 5500.1 at p. 58 (emphasis added)

[FAA] need only conclude that the sum of aeronautical benefits would not be *disproportionately less* than project costs.

FAA Order 5500.1 at p. 57 (emphasis added)

In the Declaration of Dr. Brian M. Campbell submitted to FAA on June 14, 2007, Dr. Campbell found that the incremental benefit of the entire balance of the Total Master Plan is only \$200 million in net present value more than the incremental benefits of the Phase 1 project. However, to achieve the \$200 million in incremental benefits Chicago will spend on a net present value basis \$4.3 billion. In short, for every dollar of cost incurred, there would be only about 5 cents of benefit. Decl. of Dr. Brian Campbell, at ¶¶ 73-75. This demonstrates that “the

¹⁵ As pointed out in Part I above by Commenters, Chicago’s claims of justification under the PFC statute and forecasts were rife with errors even before accounting for the recent unprecedented economic developments and even accepting Chicago’s continued use of the outdated forecasts.

Mr. Michael Zonsius
May 8, 2008
Page 17

capacity improvements attributable to a project [here the "Total Master Plan"] are [not] justified in proportion to the cost of the project", and that the benefits are "disproportionately less than project costs" — contrary to the requirement of the FAA's PFC adequate justification requirement. FAA Order 5500.1, Par 4-8¹⁶.

In connection with Chicago's AIP grant request with respect to Phase 1, Chicago submitted a Supplemental Benefit-Cost Analysis in September 2005 which purported to show that the benefits of the "Total Master Plan" were greater than the present value costs, then estimated to be \$14.29 billion, but which have increased since then. The sole documentary evidence of the economic benefits of the "Total Master Plan" in the September 2005 study was a single sheet of paper. However that document showed that the incremental benefits of proceeding above and beyond Phase 1 have a net present value of only \$200 million and a net present value of costs of \$3.5 billion. In other words, Chicago's own document demonstrated that the incremental benefits of the Total Master Plan over and above Phase 1 are less than 6% of the costs. We note that the FAA reviewed this document and stated that it did not provide a basis to support a conclusion that the benefits of the "Total Master Plan" exceeded the costs: "The FAA has reviewed Chicago's submission. However, this information was not sufficient for the FAA to make the final decision on whether the Total Master Plan is cost beneficial." FAA November 2005 LOI Analysis and Review at 26

¹⁶ As noted above Chicago has failed to provide any evidence as to the costs of the proposal which is the "airport development project" for which the \$201 million PFC authorization is sought ("OMP Airfield" and the Western Terminal") and has failed to provide any evidence as to the aviation performance or economic benefits of this proposed "airport development project". Thus Chicago has not met the "adequate justification" requirement of the PFC statute and implementing PFC regulations.

Indeed, with the continuing deterioration of the airline industry, the increasing operational and financial challenges facing airlines, and the domestic capacity and aircraft fleet reductions, the claimed benefits are likely even far less than \$200 million. But, even assuming the \$200 million in incremental benefits claimed by Chicago for completing all of the remaining non-Phase 1 projects, those incremental benefits are swallowed up just by the \$201.2 million in airfield/terminal design costs for which these additional PFCs are sought (and this figure does not even include the multi-billion costs of construction, both in absolute dollars and the \$4.9 billion present value).

Thus, there can be no showing of adequate justification for the PFC Project.

IV. Given That Chicago's Aviation Program Is In A State Of Extreme Flux And That Chicago Has Failed to Show the Availability of Funding For Balance Of The "Phase 1 Master Plan" — Let Alone The Phase 2 OMP — It Is Inappropriate For Chicago To Pursue PFCs For A Phase 2 Project At This Time.

The airline industry is not the only piece of the massive OMP puzzle that is undergoing significant changes with substantial direct effects on the activities encompassed by this PFC Proposal. Chicago's Aviation Program and funding for the "Total Master Plan" are in flux and uncertain as well. It is therefore inappropriate for Chicago, at this time, to be seeking additional federal authority to burden passengers and airlines with another levy of PFCs, particularly when the collection of such PFCs is not scheduled to occur until 2025.

First, Chicago has not yet obtained funding or provided a construction schedule for the balance of the Phase 1 Master Plan, much less for Phase 2. Chicago has yet to show a schedule for the initiation of construction — let alone the completion of construction — for billions of

Mr. Michael Zonsius
May 8, 2008
Page 19

dollars of as yet unstarted Phase 1 construction: e.g., the Concourse K extension, the people mover, the Western Satellite Terminal.

Second, Chicago's funding plan for the OMP has been proven to be illusory. Chicago's Mayor forced the abrupt resignation of the Aviation Department's Commissioner last month,¹⁷ reportedly because the Commissioner was unable to reach an agreement with Majority-In-Interest airlines on financing for OMP Phase 2, which includes the design projects at issue in this PFC Proposal.

But that funding void remains, and there is no guarantee that the newly named Commissioner will enjoy greater success in reaching an agreement with the carriers in this regard. Indeed, the carriers at O'Hare have already registered their growing reluctance to continue financing the bottomless (and now over budget) OMP/"Total Master Plan".

For example, the Majority-in-Interest of Airline Parties in October 2006 disapproved Chicago's request for \$500 million in additional funding, including \$250 million for land acquisition.¹⁸ In rejecting that request, the Airline Parties clearly expressed their "fundamental oppos[ition] to *any additional funding for the OMP*," including any authorization for the issuance of additional General Airport Revenue Bonds ("GARBs"). More recently, in February 2007, American, United, Delta, Continental, and Northwest each filed certificates of disagreement with Chicago concerning its request for an additional \$270 million for the land acquisition costs of the Phase 1 Airfield Project – representing yet another telling shortfall in

¹⁷ *Mayor Richard Daley puts Buildings Department Chief in Charge of Aviation*, Chicago Tribune, April 17, 2008.

¹⁸ *See Letter from Chicago O'Hare Airlines TOP Committee to N. Fernandez and R. Andolino*, (dated October 16, 2006).

Mr. Michael Zonsius
May 8, 2008
Page 20

financing as well as a crisis in confidence with Chicago's management of the OMP.¹⁹ In their certifications of disagreement, the airlines acknowledged the current large financing deficiency and foreshadowed a waste of the requested PFCs if additional funding was not otherwise readily forthcoming: "Approving the additional PFCs now could result in PFCs being wasted if Chicago cannot identify the additional funding required to complete Phase 1 of the program."²⁰

Yet, there is no additional funding or construction schedule identified in the PFC Proposal for the completion of the balance of the "**Phase 1 Master Plan,**" let alone construction and completion of billions of dollars of additional Phase 2 projects, and Chicago has made clear that it will not step into the funding breach, consistently reiterating that the OMP will be completed "*at no cost to local or state taxpayers.*" Chicago's PFC Proposal has failed to show, as is required under federal law, that there is sufficient funding available to complete the multi-billion dollar Phase 2 projects. 49 U.S.C. § 47106(a)(3).

Chicago's claims that it can always issue bonds without airline approval is an empty refrain. The key advantage of airline backed GARBs is that they are non-recourse against Chicago and the taxpayers. Any bonds issued that are not approved by the airlines would be recourse bonds ultimately payable by Chicago and the taxpayers of Chicago. Yet, such a result would be directly at odds with Chicago's central claims in promoting the OMP is that there will be no local taxpayer obligation for the massive airport costs:

The O'Hare Modernization Program is Mayor Richard Daley's vision for building a 21st century airport at O'Hare *at no cost to local or state taxpayers.*" Chicago website for OMP (emphasis added).

¹⁹ See Certificates of Disagreement of United, American, Continental, Northwest, and Delta on Land Acquisition (PFC Application (Land Acquisition), at E-2 to E-21 (April 2007)).

²⁰ See, e.g., Certificate of Disagreement of Continental Airlines on Land Acquisition (E-13, Land Acquisition).

Third, Phase 1 projects are still being litigated. The FAA's recent approval of \$1.2 billion in PFCs for Phase 1 projects is now on appeal before the United States Court of Appeals for the D.C. Circuit. (Case No. 07-1362.) In addition, a Petition for a Writ of Certiorari is now pending before the Supreme Court of the United States regarding the decision of the United States Court of Appeals for the Seventh Circuit on the constitutionality of the O'Hare Modernization Act and its implications for the rights of the Religious Commenters under the Illinois Religious Freedom Restoration Act. (Case No. 07-1127.) Decisions in favor of the Commenters in either of those appeals will have dramatic implications for the OMP and the Phase 1 projects. In turn, the ripple effects would impact the Phase 2 projects identified in the PFC Proposal. It is therefore inappropriate and, indeed, inefficient for Chicago to pursue additional PFC authority for Phase 2 at this time, particularly given that: (i) a favorable decision for the Commenters would unravel any the Phase 1 projects; and (ii) the proposed collection of the PFCs at issue is not to begin for more than 16 years.

Fourth, after long maintaining that "the end date for the project was undetermined," Chicago has now told the media that it plans to complete the Airport Layout Plan approved by the FAA (a/k/a/ "Alternative C"; "Total Master Plan"; "Preferred Alternative" by 2014. (2014 was the end date for the "delayed schedule" to complete the "Total Master Plan" set forth in the 2005 EIS.) However, as discussed above, Chicago has not provided any construction schedule or funding plan for billions in unstarted, unfunded, and unscheduled "Phase 1 Master Plan" construction (e.g., the Concourse K extension, the people mover, the Western Satellite Terminal) and added billions in unstarted, unfunded, and unscheduled "Phase 2 Master Plan" construction (e.g., Terminals 4 and 6).

In short, Chicago's media claim that it will complete the "Total Master Plan" by 2014 (the date contained in the 2005 EIS) is little more than a public relations hoax.

With a new Commissioner in charge of one of the country's largest and most controversial public works projects; with billions of dollars of unscheduled, unfunded and unstarted construction for both the "Phase 1 Master Plan" and the "Phase 2 Master Plan," with reluctant stakeholders like the two major hub carriers at O'Hare, and with the ongoing transformation of the airline industry, it is inappropriate for Chicago to be seeking authority for the collection of an additional \$200,000,000 in PFC revenues to support projects for which no adequate justification has been provided.

V. The PFC Proposal Grossly Overestimates The Funds Necessary To Accomplish The Identified Action Items.

The PFC Proposal seeks to collect and use more than \$200,000,000 for two "design" projects: Airfield Design and Western Terminal Area Planning. In terms of Airfield Design, Chicago seeks \$196,000,000 for construction-ready design drawing for "the remaining airfield elements of the [OMP], including Runway 9C-27C, Runway 10R-28L, extension to Runway 9R-27L, Taxiway LL and related and enabling projects necessary for implementation" thereof. (Form Letter, Exhibit at 1 (March 31, 2008) (*see* OMP40408-004).) Chicago also proposes to use \$5,000,000 of PFC revenue to prepare plans "for the western terminal complex including gates, service roads, service buildings, automobile parking, access roads, intermodal connections and related facilities." (Form Letter, Exhibit at 1 (March 31, 2008) (*see* OMP40408-004).) As Chicago's CFO described the planned use of the PFC revenues, the funds would be expended for "preliminary and final **design** of the remaining airfield projects, activities necessary to manage and support that **design** effort, and **planning** for the area shown on the ALP for the western

terminal and western access to the airport.” (Letter of P. Volpe, City CFO, to American Airlines and United Air Lines (dated March 20, 2008) (emphasis added) (*see* OMP40408-0031).) As made clear in the Notice and the CFO’s description, the two projects at issue are for “design” and “planning”.

The amount of \$196 million for merely “design” is an exorbitant amount and beyond reason.²¹ That amount is equivalent to the cost of constructing a runway. This proposal is reminiscent of Chicago’s previous request for \$100 million in PFCs to perform the EIS for the OMP, which the U.S. Court of Appeals for the District of Columbia found to be an “eye popping amount, “extraordinarily high” and “an immense sum”. *Village of Bensenville v. FAA*, 376 F.3d. 1114, 1120-21 (D.C. Cir. 2004). So too here is the proposal to spend almost \$200 million to engage in engineering design far too much money. Chicago will be unable to satisfy the critical statutory requirement that the amount it proposes to impose and use “is not more than the amount necessary to finance the specific airport project”. 49 U.S.C. § 40117 (d)(1). Chicago should not proceed with this PFC Proposal for \$200,000,000 in design costs because it would contravene the federal statute which requires that the revenues collected not exceed the amount necessary to finance the specific project. 49 U.S.C. § 40117(d).

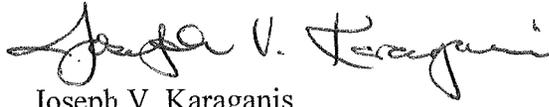
VI. Conclusion.

For the foregoing reasons, the Commenters oppose the PFC Proposal and urge that it be withdrawn.

²¹ The City has even provided the carriers with inconsistent information in this regard. For example, in the City CFO’s Cost Estimates Summary, it estimates costs for Runway 10R/28L and Deferred Projects at \$37,100,000 and \$7,200,000, respectively. However, on the very next page, it shows the estimates for those two line items as \$33,600,000 and \$10,800,000, respectively. Although the total for these two projects combined remains the same, the statute looks at the specific project.

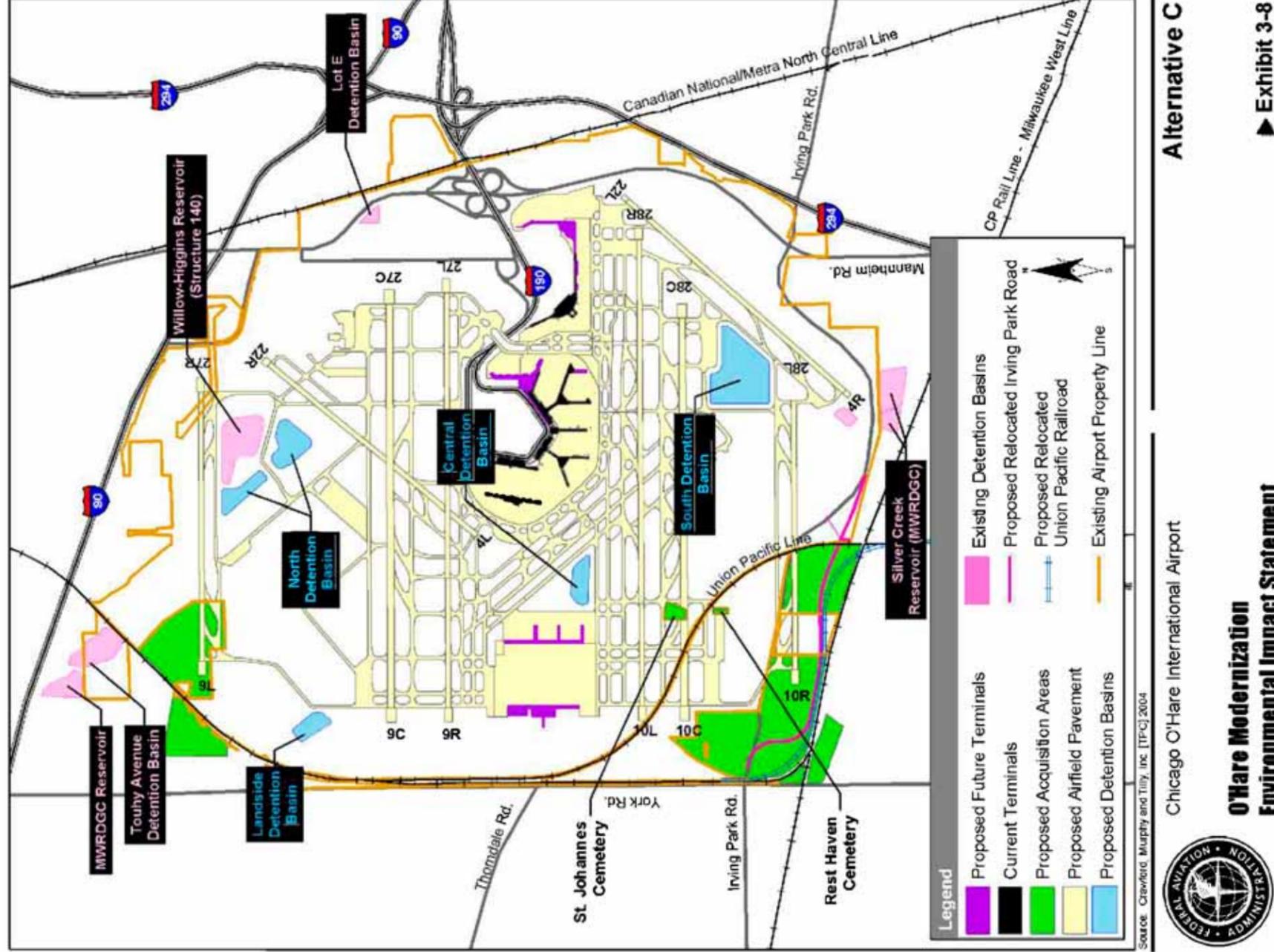
Mr. Michael Zonsius
May 8, 2008
Page 24

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph V. Karaganis". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

Joseph V. Karaganis
Counsel for the Commenters

Exhibit 1 Enclosed



RESPONSE TO PUBLIC COMMENTS

In accordance with 14 CFR § 158.24, the City provided notice and opportunity for public comment on the application. One comment was received from a lawyer stating that he represents the Villages of Bensenville and Elk Grove Village, St. John's United Church of Christ, Helen Runge, Shirley Steele, Bernardo Flores, Gail Flores, Robert Rackow, Arlene Benson, William Baird, Robert Baird and Nelson Marrero¹. Below the City responds to the Comment. No other public comments were received.

Major documents referred to in this Response are abbreviated as follows:

- FAA O'Hare Modernization Environmental Impact Statement, July 2005 (EIS)
- FAA Record of Decision for O'Hare Modernization, September 2005 (ROD)
- FAA Letter of Intent, November 2005 (LOI)
- FAA Analysis and Review of City of Chicago's Application for Letter of Intent AGL 06-01, November 2005 (A&R)
- FAA Final Agency Decision on City of Chicago PFC Application No. 06-19-C-00-ORD, September 4, 2007 (FAD)
- O'Hare International Airport Master Plan (Master Plan)
- O'Hare Modernization Act, 620 ILCS 65/5 et seq. (OMA)
- Official Statement for \$779,915,000 City of Chicago, Chicago O'Hare International Airport Series 2008A-D Bonds (OS)
- *Bensenville v. FAA*, 457 F.3d 52 (D.C. Cir. 2006) (Bensenville 1)
- *St. John's United Church of Christ v. City of Chicago*, 502 F.3d 616 (7th Cir. 2007), cert. denied ___ U.S. ___ (2008) (St. John's 1)
- *St. John's United Church of Christ v. FAA*, 520 F.3d 460 (D.C. Cir. 2008) (Bensenville 2)

I. General Responses

A. The Completion Phase projects cannot be segmented from the entire OMP

A theme repeated in various forms throughout the Comment argues that the FAA cannot rely on the airfield, environmental and economic analyses performed for the whole OMP when evaluating a project that is a necessary part of the whole OMP. For example:

In its April 3 notice, Chicago relies upon forecasting, computer modeling, environmental impact information, and aviation performance and benefit claims prepared for what the FAA called "Alternative C", a/k/a the "Total Master Plan" or the "Preferred Alternative.". . . Yet Chicago has provided absolutely no data or analysis of the aviation performance, aviation benefits, or environmental impact of the 'airport development project' for which the \$201 million PFC authorization is sought – i.e., the so-called "OMP Airfield" and the Western Terminal. Comment at 3.

¹ These parties are referred to in this Response as "Commenters," and their filing as the "Comment." The full text of the Comment is included in Attachment E.

The Comment is not clear. The Comment appears to say that, in addition to the exhaustive evaluations in the Master Plan, EIS and ROD for the whole program – runways, taxiways, terminals, roadways, etc. – wholly new evaluations must be performed for each runway, each taxiway, each terminal, each roadway and every other component of the plan whenever any FAA decision specific to those components arises.

If this is the claim, it is the same argument made by the same author commenting on the 2007 PFC applications demanding separate analysis isolating Phase 1 runway projects from the overall program of which they are a part. The OMP is a costly and complex development plan. The City has prudently programmed construction in phases. However, it is a single integrated development plan and must be analyzed and justified on that basis. Segmentation of the plan into small component parts is inconsistent with the City's Master Plan, the EIS, and the ROD. The FAA's approach is consistent with NEPA regulations and the FAA's NEPA Order. 40 CFR § 1508.25; FAA Order 5050.4B ¶ 905.

For Phase 1, the corresponding comment claimed that the rest of the OMP would never be built. That prior claim was plainly wrong when made. Its error is confirmed by the City's actions to proceed with the Completion Phase, including this Application. For the Completion Phase, the City and the FAA are bound by rules governing analysis of cumulative impacts.

Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. 40 CFR § 1508.7

Analysis of Completion Phase projects properly assumes the existence of the Phase 1 projects, which are currently under construction.

Furthermore, the City has taken major steps toward implementation of the entire project, including starting construction, substantial land acquisition, and moving people and businesses. If any of these events have occurred, "the responsible FAA official need not re-evaluate the document." Order 5050.4B ¶ 1401c. For the OMP, all three have occurred. Two runway projects will be commissioned in 2008. More than \$100,000,000 of site preparation has been completed for a third. Land specified by State law for the entire program has been acquired and people have been moved. The City has undertaken major projects which anticipate the construction of the rest of the runways. The design and planning work to be funded by this proposed PFC is one more sequential step in completing the project approved in the ROD. On June 30, 2008 the City published three requests for proposals to perform lead design, multidisciplinary design and western terminal area planning.

Even if separate analysis of the Completion Phase components were both legal and appropriate, it can be found in the EIS, ROD and other documents. The EIS describes Phase 1 benefits and impacts and total OMP benefits and impacts. Subtract one from the other to isolate the incremental amounts attributable to the Completion Phase. For example, for airfield capacity, Phase 1 accommodates an additional 90,000 operations of the total OMP's 220,000 additional operations.

B. Independence of PFC decision.

The City intends to construct the OMP, including the remaining airfield projects, the western terminal and other projects shown on the approved ALP. The City prefers using PFCs to pay part of the cost of those projects, relying on GARBs, Airport Improvement Program grants and third party

financing for the rest. However, the City does not require PFCs or AIP grants to build these projects and will build them even if PFCs and GARBs are not available. Completion of the OMP does not depend on the availability of PFCs and GARBS. See Attachment F-2.

The City explained in the 2007 PFC application that it has the power to use airport revenues, and to issue GARBs supported by airport revenues, to pay for OMP projects. It may do so without further approval by airlines using O'Hare, as described in Attachment F-2. The City is not required to have long-term airline use or lease agreements in order to operate O'Hare or in order to collect sufficient payments by airport users to pay the cost of operating and improving it. See Response #20.

The bond market evaluates the likelihood that there will be sufficient airport use to support GARB debt service. To date, the bond market has demonstrated comfort with O'Hare's future traffic by buying large amounts of bonds at favorable interest rates unsupported for much of their term by airline agreements of any kind. O'Hare is likely to have sufficient traffic to pay the costs of operating and improving the airport. Those revenues will be in addition to AIP grants and third party financing. The Master Plan identified the sources of funding the City intends to use, and those remain the intended sources. See Attachment F-2. The City has continuing power to levy sufficient charges to support operations, and any debt service required to finance the OMP.

II. Specific Responses

Comment 1

“Chicago has failed to provide information and documents in support of the PFC Proposal to demonstrate compliance with the statutory and regulatory requirements and Chicago has refused to timely and adequately respond to Commenters’ Freedom of Information Act (“FOIA”) requests for information and documents relating to the PFC Proposal.” (Pages 2-3)

Response 1

The City provided all information required by 14 CFR § 158.24 which specifies six items: (i) description of the project, (ii) brief justification for the project, (iii) PFC level for the project, (iv) total PFC revenue to be used for the project, (v) proposed charge effective date, and (vi) proposed charge expiration date. Each of these six specific requirements was satisfied in the notice. The Comment does not claim that items (i) or (iii)-(vi) were not provided.

The comment's claim appears to be that insufficient information on project justification has been provided. The regulation requires “a brief justification” for the project. The notice provided about 650 words of justification. The regulation requires the City to “make available a more detailed project justification or the justification documents to the public upon request.” The notice lists eight justification documents. They contain thousands of pages of detailed explanation and analysis of purpose and need for the airfield improvements to be planned and designed with the proposed PFCs. They include extensive responses to comments submitted by many of the Commenters making the same points about project justification repeated here. Although copies of these documents would have been provided in response to a request, the lawyer who wrote the Comment already has those documents, as well as more than a million pages of administrative record supporting them.

The comment appears to assume that all of the information that will appear in the Application submitted to the FAA must also be available to the public at the comment stage of the process.

Neither law nor regulations require that the public notice process include a completed application satisfying 14 CFR § 158.25.

The City also believes it is complying fully with Illinois FOIA. However, compliance with that state law is not a requirement of federal PFC regulations. The Comment's recitation of claimed failures by the City to comply with Illinois FOIA is irrelevant to the federal process. State law provides the exclusive process for resolving claims under FOIA. The City provided everything required by federal law at the public comment stage of the PFC process.

Comment 2

“Chicago has provided absolutely no data or analysis of the aviation performance, aviation benefits, or environmental impact of the “airport development project” for which the \$201 million PFC authorization is sought – the so-called “OMP Airfield” and the Western Terminal.” (pages 3-4)

Response 2

See General Response A and Response #5.

Completion Phase runway design and western terminal area planning are sequential steps in a continuous airport development process that began in 2001. The City proposes nothing new. The projects to be designed and planned are the same projects proposed by the City in 2001, described and justified in the 2003 Master Plan, analyzed by the FAA in the 2005 EIS, approved by the FAA in the 2005 ROD, and approved by the FAA for use of PFCs for land acquisition in the 2007 FAD. They are the same projects unsuccessfully challenged in *Bensenville I*. Justification for these projects predates the 2001 announcement by many years. See *History of O'Hare*, EIS 1-10 – 1-18. The reasons for fixing O'Hare have not changed. These long-standing justifications were thoroughly examined by the FAA, the United States Environmental Protection Agency, the Illinois Environmental Protection Agency, the United States Army Corps of Engineers, and other agencies. The projects are the same projects about which the Illinois General Assembly in 2003 said: “[I]t is essential that the O'Hare Modernization Program be completed efficiently and without unnecessary delay.” 620 ILCS 65/5(a)(6).

The problem which OMP solves has not abated. O'Hare is among the most delayed airports in the United States for both on-time arrival and on-time departure performance. According to Bureau of Transportation Statistics data, O'Hare is among the most delayed airports in the United States for both on-time arrival and on-time departure performance. For calendar year 2007, O'Hare ranked 29th out of 32 major airports in arrival performance and 32nd out of 32 airports in departure performance. For calendar year 2006, O'Hare ranked 30th out of 32 major airports in arrival performance and 32nd out of 32 major airports in departure performance (Bureau of Transportation Statistics, Ranking of Major Airport On-Time Arrival Performance Year-to-date through December 2006 and December 2007; Ranking of Major Airport On-Time Departure Performance Year-to-date through December 2006 and December 2007, Tables 4 and 6). In both cases on-time performance was worse than calendar year 2005, when O'Hare ranked 22nd out of 31 airports in arrival performance and 29th in departure performance. This poor performance continues in 2008. For the first six months of 2008, O'Hare ranked 30th in arrival performance, one rank worse than the first six months of 2007, and 32^d out of 32 in departure performance, as in the first six months of 2007. Departure performance for the first six months of 2008 was worse than the next worst airport by a wide margin (4.72% of on-time departures), the widest margin between airports on the entire list. (Bureau of Transportation

Statistics, Ranking of Major Airport On-Time Arrival Performance Year-to-date through June, 2008; Ranking of Major Airport On-Time Departure Performance Year-to-date through June, 2008, Tables 4 and 6). This poor performance occurs even though the FAA by rule imposed "Congestion and Delay Reduction" rules at O'Hare (14 CFR Part 93, Subpart B, §§ 93.21 – 93.32).

Comment 3

“Chicago has failed to produce a current 2008 enplanement and operations forecast for O’Hare to reflect and incorporate the massive and fundamental structural changes in the airline industry since the 2002 forecast used by FAA to approve the Airport Layout Plan in 2005, and changes since the forecast used by Chicago (to the year 2032) in its September 27, 2005 Supplemental Benefit-Cost Analysis.” (Pages 4, 10-22)

Response 3

“The *Terminal Area Forecast (TAF)* system is the official forecast of aviation activity at FAA facilities. These forecasts are prepared to meet the budget and planning needs of FAA and provide information for use by state and local authorities, the aviation industry, and the public.”² The TAF is updated annually. FAA’s forecasting is entitled to deference. “[P]redicting demand for the airport in 15 years is not so much a factual finding as a prognostication and it is due more deference.” *City of Los Angeles v. FAA*, 138 F.3d 806, 807 n. 2 (9th Cir. 1998), quoted with approval in *City of Olmsted Falls v. FAA*, 292 F.3d 261, 270 (D.C.Cir. 2002).

The most recent O’Hare TAF was published at the end of 2007. For 2018, the forecast year used in the EIS, the 2002 and 2007 TAFs compare as follows:

Table E-1

	2002 TAF	2007 TAF	% Change
Enplanements (2018)	50,372,000	49,251,761	-2.9%
Operations (2018)	1,194,000	1,175,036	-1.6%

Source: FAA Terminal Area Forecast.
Prepared by: Ricondo & Associates, Inc.

The 2007 TAF shows that activity levels forecast for 2018 in the EIS will be exceeded in 2019 (50,624,222 enplanements and 1,201,500 operations). As long as it is likely that the EIS forecast activity levels will be reached in *any* future year for which it is reasonable for the City and the FAA to plan, the project is justified even if that amount of activity does not occur exactly in 2018. The project was justified on activity levels, not years. The specific date on which demand levels justifying the project will be reached is unimportant. The EIS analyzes the possibility that the 2002 TAF forecasts might not be met when forecast and concluded that O’Hare is likely to be in demand for air travel even if these conditions occurred. EIS R-4 to 5.

Schedules for airport development that are directly related to demand levels should be tied to those demand levels, rather than dates, since the actual demand will often vary

² FAA Terminal Area Forecast, 2007.

from that forecast, particularly as the time frame increases. FAA Advisory Circular 5070.6B (Airport Master Plans) ¶ 303c.3

As the 2007 TAF makes clear, the demand levels that justify the OMP will occur. It takes years to open a runway – more than seven years from announcement to commissioning for the two runway projects opening in 2008; 13 years from announcement to the commissioning of the last runways in 2014. The City must anticipate airfield needs far into the future in order to have runway capacity when it is needed. Even if projected activity occurs later than forecast by several years, the underlying need to rearrange O'Hare to accommodate traffic with less delay will not change. The Comment would have the City start all over again years too late.

The Comment at page 13 relies on a recent dip in O'Hare traffic. Recent activity data are no surprise. The FAA capped O'Hare operations, and O'Hare continues to suffer from extreme delay even with the caps. Both factors depress traffic in the short term. Both are cured by the OMP. No conclusions about long-term trends can be drawn from a few months or even a few years of data at an airport that cannot operate at higher activity levels because of delay, and is not permitted by the FAA to do so.

The airline industry is historically cyclical. The cycles are shorter than the time required to build new runways. Much like the stock market, passenger and operations growth at airports often shows short-term peaks and valleys on a path to long-term growth. Neither the FAA nor the City predicts that traffic will grow steadily at a fixed rate every year. However, there is little doubt that traffic will grow. Chicago airports – first Midway, then O'Hare, and now both Midway and O'Hare – have been major connecting points since the beginning of commercial aviation, consistent with the long history of Chicago as a transportation hub for other modes. Nothing suggests that this historic role, a function of Chicago's economy, population and mid-continent location, will change in the future.

The bond market independently confirms the probable future vitality of O'Hare, and therefore the need for the OMP. Bonds for the OMP have been successfully sold in a series of separate transactions since 2003. The 2008 bonds were sold at favorable interest rates in a difficult bond market with full disclosure of the risks described in the Comment, including “economic and political conditions, aviation security concerns, the financial health of the airline industry and of individual airlines, airline service and routes, airline competition and airfares, airline consolidation and alliance, availability and price of aviation and other fuel, capacity of the national air traffic control system and of O'Hare” and various other factors. OS 83-84. Bonds are sold on the market's perception of the strength of the airport, not the particular airlines that happen to be serving it from time to time. (As explained in Response #16, the bond market is not relying on taxing powers.)

Comment 4

“Whatever aviation forecast is used, Chicago has failed to produce evidence as to the aviation performance (including claimed economic benefits) and environmental impacts of the ‘airport development project’ for which the \$201 million PFC authorization is sought (‘OMP Airfield and the Western Terminal’). The TAAMs computer modeling for the 2005 ROD and related computer modeling of noise impacts was based on the complete terminals and runway configuration of the Total Master Plan – which includes Terminal 4, Terminal 6, the Concourse K extension, the Western Satellite Terminal and the underground people mover – none of which are included in the “airport development” project Chicago’s PFC Proposal [sic]. Without these “Total Master Plan” components in place, the runway utilization of the ‘airport

development project' for which the \$201 million PFC authorization is sought (i.e., the 'OMP Airfield' and the 'Western Terminal') is likely to be significantly different than that assumed for the 'Total Master Plan'; and the aviation performance and environmental impacts will be similarly different." (Pages 4-5)

Response 4

See General Response A and Response #8.

Comment 5

"Chicago fails to provide a completion date (i.e., completion of construction/start of operation) for a base year of analysis for this 'airport development project' and fails to identify the equivalent 20 year period of analysis for either justifying economic or aviation performance or assessing environmental impacts of the PFC Proposal." (Pages 5-6)

Response 5

See Response #11 re completion date. See Attachment F-4 re cost effectiveness. Aviation performance and environmental impacts were analyzed in the EIS and ROD. The Court of Appeals found that the FAA "appears to have acted with great care in conducting its analyses for the EIS and ROD." *Bensenville I* at 72. The projects included in this Application were covered in that case, which dealt with the entire ROD and all of its projects. It reviewed FAA decisions on the City's plan "for realigning three of the seven existing runways and adding an eighth runway." *Bensenville I* at 58. No new analysis is required.

Comment 6

"Chicago has failed to show the cost of the 'airport development project' for which the \$201 million PFC authorization is sought . . . and has failed to demonstrate the financial viability of the 'OMP Airfield' and the 'Western Terminal' 'airport development project' as required by FAA PFC Order 5500.1 (Page 6)

Response 6

This Application complies with Order 5500.1. See Response #1.

Comment 7

"Chicago has failed to demonstrate the delay reduction performance of the 'airfield development project' for which the \$201 million PFC authorization is sought. . . . There is no TAAMs or other computer performance analysis of the delay reduction or capacity enhancement performance anywhere in the documentation cited by Chicago as to the aviation performance of this 'airport development project.'" (Page 6)

Response 7

See General Response A and Response #5.

Comment 8

“[T]here is no evidentiary basis for Chicago’s claim that building the ‘OMP Airfield’ and adding just the ‘Western Terminal’ will bring the ‘capacity of terminal and support facilities’ ‘in balance with the capacity of the airfield.’ Chicago has failed to demonstrate such balance:

- A. Without the missing added terminal there is no demonstration that O’Hare will have the required terminal capacity Chicago and FAA stated Chicago would need to meet even the 2018 demand which was the basis of the 2005 FEIS and ROD;
- B. Conversely, if Chicago has no assurance of building the missing terminals, the ‘OMP Airfield’ appears to be more than is necessary to balance airfield capacity with the limited additional terminal capacity provided by the Western Terminal” (Pages 6-7)

Response 8

Aircraft parking positions needed to handle the passengers delivered by the completed OMP airfield will be available. The City intends to build the terminals shown on the ALP. The western terminal planning project to be funded with these PFCs is part of the process to produce new gates. The City expects new gates to be funded primarily by third party financing, which is the way many current O’Hare gates were financed. Those third parties may be airlines, as is the case with many existing O’Hare gates, or investors who will build the gates and lease them to airlines. Both methods of third party financing are in use at major airports today. See Attachment F-2.

At the time of the EIS the airport had 209 potential aircraft parking positions. EIS 1-9. Currently fewer than 200 are used. The OMP plans a maximum of 232 gates. The western terminal complex (the terminal/concourse component plus the satellite concourse) could be configured to have as many as 60 gates. However, much of that gain would be offset by reconfiguration of existing terminals to accommodate larger aircraft. The Master Plan shows how gates would be allocated among terminals:

Table E-2

Terminal	Existing	OMP
Terminal 1	50	45
Terminal 2	45	26
Terminal 3	73	56
Terminal 4	NA	12
Terminal 5	21	17
Terminal 6	NA	16
Western Terminal	NA	60
Total	189	232

Source: O’Hare International Airport Master Plan, VI-16
 Prepared by: Ricondo & Associates, Inc.

The City will develop new gates, and reconfigure existing gates, in phases. Terminals 4 and 6 and the terminal/concourse component of the western terminal complex are scheduled to completed with the Completion Phase runways, about six years from now. EIS 1-52, 5.20-6 – 5.20-8. The western satellite concourse and K concourse extension are planned to be completed sooner. The proposed PFC-supported planning project is a necessary step in building the western satellite concourse. The

concourse K extension would add 670 linear feet of frontage to the concourse H/K complex (5,636' v. 6,306'), enough to gate no more than six small aircraft and fewer large aircraft. With the new frontage, the plan reconfigures the gates to allow for larger aircraft, reducing the total gate count from 39 to 33. In that plan, K concourse has more gates *without* the extension than with it.

There may be temporary periods during which the supply of contact gates is not balanced with the airfield. Nevertheless, the airport will be able to handle all of the passengers without them, including all of the passengers on the 220,000 additional flights delivered by the complete OMP airfield. "A shortage of available gates can lead to the use of remote aircraft parking positions to load and unload passengers." EIS 2-33

Demand for an airport, says the FAA, depends much more on location, runways and ticket prices than on how nifty the terminal is. Even the number of gates, within limits, has little effect, so long as the planes can land. [Court's fn. 3: Runway capacity is important, the agency concedes, but not affected by this project.] If they can't park next to the terminal, they park farther away and passengers willingly bus back and forth. The FAA supports its estimates with studies of other airports and its accumulated experience nationwide. . . .

[T]he FAA doesn't say that modernizing the terminal will have *no* effect on usage. If congestion in the terminal gets bad enough, some passengers might switch airports. What the FAA says is that it can't accurately predict how big this effect might be, except that it will be modest at most. . . .

[T]he FAA's ultimate determination is due deference. *City of Los Angeles v. FAA*, 138 F.3d 806, 807-08 (9th Cir. 1998).

The Comment claims that lack of terminal expansion would materially reduce aircraft operations and passengers below forecast levels. As in *City of Los Angeles*, measuring that effect is difficult but "modest at most." *Id.*

The City can accommodate all of the passengers without new gates by reconfiguring existing terminals to increase gate capacity. The City also can use "hardstand" parking positions ("If they can't park next to the terminal, they park farther away and passengers willingly bus back and forth." *City of Los Angeles*, 138 F.3d at 808). The EIS counts 20 existing hardstand positions (EIS 1-9), for a total 209 existing aircraft parking positions. The City has practically unlimited capacity for hardstand positions. Hardstands are not as desirable as contact gates, but they work. O'Hare has them today. For several years, while the new international terminal was being built, nearly all O'Hare international flights arrived at hardstands. Other airports routinely use such hardstands. It would be better to handle those passengers at contact gates, as the OMP proposes to do. "Remote parking positions sometimes require the use of shuttle buses to move passengers between the aircraft and the terminal building, which provide poorer service for passengers and less efficiency for airlines." EIS 2-33. But passengers can be handled remotely. Western terminal real estate has room for 60 aircraft *with* the western terminal; it can park at least 60 aircraft *without* it at hardstands. One way or the other, there is ample space to park airplanes, and deplane and enplane their passengers. Extensive use of hardstands would be convincing evidence of an urgent need for new gates. The City believes that the market would respond with terminal proposals and financing. Hardstands would be temporary.

The Comment asserts that gates will not be built. The Comment opposes money to plan new gates. The Commenter cannot have it both ways. It is not reasonable to rely on the absence of new gates while opposing a necessary step in the process of providing new gates.

Comment 9

“Because the runways of the ‘OMP Airfield’ are more than are needed to balance with the limited terminal capacity of the existing terminals and the Western Terminal, there is certainly no need to destroy St. Johannes Cemetery.” (Page 7)

Response 9

See Response #8. This Application has nothing to do with St. Johannes cemetery. Two of the runway projects are on the north side of the airport, distant from the cemetery. The other is thousands of feet south of the cemetery. Runway 10C/28C, which is the only runway that affects the cemetery, has already been designed, is already under construction, will not be abandoned and is not the subject of any work covered by this Application. How design of these runways, and planning for this terminal area, cause injuries to St. Johannes cemetery is a mystery. See *Bensenville 2* at 462.

Comment 10

“The estimate of \$200 million for purely ‘design’ activities for Runway 9C-27C, Runway 10R-28L, extension to Runway 9R-27L, and related enabling projects (e.g., Taxiway Lima-Lima), and the Western Terminal is exorbitantly high to encompass just ‘design’ work. Airports have spent that amount to *construct* new runways.” (Pages 8, 22-23)

Response 10

See Attachment F-1.

Comment 11

“Nowhere in Chicago’s documentation as to the ‘airport development project’ for which the \$201 million PFC authorization is sought . . . is there any schedule for design and construction of these projects of the ‘Total Master Plan’ – component projects which Chicago and FAA said were critical to meet 2018 demand and were to be completed by 2014. Yet Chicago has been erroneously claiming to the news media that Chicago is adhering to the 2014 completion date set forth in the FEIS. Chicago has swept under the rug any schedule and commitment to complete several billion dollars of components of the ‘Total Master Plan’ . . .—multibillion components which FAA said were necessary and which Chicago has falsely told FAA and the public would be completed by 2014. Further, Chicago is breaching and abandoning even the 2014 schedule set forth in the FEIS by proceeding (without any explanation or justification) which [sic] calls for construction of the balance of the ‘Phase 1 Master Plan’ – before proceeding with any need for construction of the southernmost Runway 10R/28L.” (Pages 8-9)

Response 11

The City’s goal is OMP completion by 2014. The work described in this Application is one step to reach that goal. The City acknowledges that it is an ambitious goal, made more so by the Commenters’ persistent efforts to delay and frustrate the project. Commenters, having spent millions of taxpayer dollars on efforts to delay the project, cannot be heard to complain that the deadline

cannot be met. The City is doing what it can to meet that completion date. The work described in this Application is part of that effort.

Comment 12

“If Chicago is relying on claimed benefits for the ‘Total Master Plan’ as the basis for its purported justification for the ‘airport development project’ . . . Chicago should disclose the current cost of the ‘Total Master Plan.’” (Page 9)

Response 12

The estimated cost of the entire OMP, including airfield and terminal projects, was disclosed in 2001, and has been available to the public ever since, expressed from time to time in updated current dollars. It is shown in the Master Plan. Master Plan VII-23. Adjusted for inflation, the costs estimated there continue to be the approximate estimated costs of for the OMP elements shown there. The current working estimate for Phase 1 was explained in an earlier PFC application. The entire project described in the Master Plan is within budget. See Attachment F-3.

Comment 13

“Chicago has yet to show how it can fund the cost of the ‘Total Master Plan’ – or indeed even the ‘airport development project’ . . . without PFC funds and without anticipated AIP funds.” (Page 9)

Response 13

The PFC law and regulations do not require the City to show that it can fund airport projects without PFCs. PFCs are available to the City and the City intends to use them. The claim that the City has yet to show how it can fund the project without AIP funds ignores the finding to the contrary by the Court of Appeals. *Bensenville 1* at 65. If necessary, the City can fund its proposed development without PFCs or AIP grants. See General Response B and Attachment F-2.

Comment 14

“Chicago has yet to disclose the environmental impacts of the ‘Total Master Plan’ – especially for the period of time used to claim economic justification for the ‘Total Master Plan’ – i.e., the year 2032.” (Pages 9-10)

Response 14

See Response #5.

Comment 15

“Chicago has failed to produce credible and reliable evidence as to the claimed economic benefits of the ‘Total Master Plan.’” (Page 10)

Response 15

See Response #5 and Attachment F-4.

Comment 16

“The Chicago proposed ‘airport development project’ . . . simply has no evidence to support it and ignores the very schedule and facilities (e.g., added terminals 4, 6, Western Satellite, people mover) which Chicago and the FAA claimed (in the FEIS and 2005 ALP ROD) were essential to be constructed by 2014 to meet 2018 demand.” (Page 10)

Response 16

See Response #8.

Comment 17

“The City continues to rely on the demand analyses supporting the 2005 EIS, but that analysis can no longer be relied on to support the project given the massive transformation occurring in the airline industry, a transformation which in the last few months has resulted in the bankruptcy of and/or cessation of service by eight airlines, across the board capacity reductions and employee layoffs through the rest of the industry, and merger proposals. . . . Simply put, the unprecedented changes to the airline industry and the underlying economy completely invalidate the delay/capacity forecasts upon which the OMP – including the Phase 2 projects at issue here – are premised.” (Pages 10-15)

Response 17

See Response #3. Of the eight airlines listed in the Comment, only one served O'Hare and that airline had little O'Hare service.

Comment 18

“Chicago has failed to demonstrate that the ‘airport development project’ for which the \$201 million PFC authorization is sought . . . meet [sic] the statutory and regulatory requirements of the PFC statute and implementing regulations.” (Pages 15-18)

Response 18

See Response #1.

Comment 19

“Chicago’s Aviation Program and funding for the ‘Total Master Plan’ are in flux and uncertain as well. It is therefore inappropriate for Chicago, at this time, to be seeking additional federal authority to burden passengers and airlines with another levy of PFCs, particularly when the collection of such PFCs is not scheduled to occur until 2025.” (Pages 18-20)

Response 19

Chicago is negotiating with airlines about a wide variety of matters, including Completion Phase funding. Such negotiations are part of a long history of negotiations extending back to the original construction of O'Hare. Airline negotiations are a normal part of airport management.

Although the City’s agreement with the major airlines at O'Hare might require further negotiations were the LOI vacated, renegotiations with the airlines do not

create “a significant increase in the likelihood” [citation omitted] that the project would scuttled altogether rather than merely delayed. *Bensenville1* at 70.

The OMP has been stable from the beginning. Its leadership has not changed in the more than five years the project has been under way. More important: the Mayor of the City of Chicago and his commitment to completing the OMP as fast as possible has not changed.

PFC approvals estimate the year in which approved PFC collections will terminate. Once approved, however, all available PFCs are available for all approved projects.

Comment 20

“Chicago’s claims that it can always issue bonds without airline approval is an empty refrain. The key advantage of airline backed GARBs is that they are non-recourse against Chicago and the taxpayers. Any bonds issued that are not approved by the airlines would be recourse bonds ultimately payable by Chicago and the taxpayers of Chicago.” (Page 20)

Response 20

The Comment is wrong. General airport revenue bonds are, and will be, payable only from the revenues described in the bonds. Bondholders will have no recourse to taxpayers.

The City has issued GARBs with maturities extending to 2038 with hundreds of millions of dollars of debt service scheduled to be paid after the airline agreements expire in 2018. Those post-2018 payments are not backed by airline agreements. They are not secured by “Chicago and the taxpayers of Chicago.” Those bonds “will not be general obligations of the City and will not constitute an indebtedness or a loan of credit of the City within the meaning of any constitutional or statutory limitation, and neither the faith and credit nor the taxing power of the State of Illinois, the City or any other political subdivision of the State of Illinois will be pledged to the payment of the principal of or interest on the 2008 Third Lien Bonds.” OS 5.

The expiration date of the airline agreements was fully disclosed in the OS. The bonds were purchased bearing interest rates favorable to the City.

Revenue bonds on which debt service is paid solely out of user fees, without any back-up security from taxes, are common in transportation infrastructure finance. For example, Illinois State Toll Highway Authority (ISTHA) bonds by law “shall be payable solely out of revenues of the Authority, accumulated reserves or sinking funds, bond proceeds, proceeds of refunding bonds, or investment earnings as the Authority shall specify in a bond resolution.” 605 ILCS 10/17. The bonds are sold on the basis of expected toll road use. No taxes are pledged (and there are no contracts by users promising to use the toll roads or pay tolls). ISTHA has more than \$2 billion of bonds outstanding, none secured by taxes. Similarly, Illinois municipal airport owners may issue airport revenue bonds under the Illinois Municipal Code subject to the explicit condition that “no holder of any bond issued under this section shall ever have the right to compel any exercise of taxing power of the municipality to pay the bond or the interest thereon.” 65 ILCS § 11-102-6. Nothing in the law requires long-term airline agreements to support such bonds.

Revenue bonds that have no taxing power securing them are routinely sold by airports that do not have long-term airline agreements. The Port of Oakland, California, an independent department of

the City of Oakland, issued airport revenue bonds in 2007 with maturities extending to 2029 without long-term airline use agreements.

The commercial air carriers, both passenger and cargo, serving the Airport have historically operated under agreements with the Port that are cancelable on short notice. Effective as of September 2000, consistent with past practice, the Port and the airlines at the Airport agreed to a 10-year Airline Operating Agreement and Space/Use Permit . . . The Airline Operating Agreement may be canceled with respect to any airline, by either the airline or the Port, upon 30 days' written notice. Official Statement, \$503,090,000 Port of Oakland Intermediate Lien Refunding Revenue Bonds Series 2007A-C, p. 36. (Cover and cited page attached)

According to the Official Statement

The 2007 Bonds are not a debt, liability or obligation of the City of Oakland, the State of California or any public agency thereof (other than the Board to the extent of the Intermediate Lien Pledged Revenues). Neither the faith and credit, the taxing power nor property of any of the aforementioned public entities (other than the Board to the extent of the Intermediate Lien Pledged Revenues) is pledged to the payment of the principal of or interest or premium, if any, on the 2007 Bonds. The Board has no power of taxation." Id., Cover

In 2002, the City of Los Angeles issued airport revenue bonds with maturities extending to 2020 without long-term airline use agreements.

The Department [of Airports of the City] has entered into separate, but substantially similar operating permits covering the use of landing facilities with air carriers serving LAX. These operating permits grant operating rights to the airlines typically for a five-year term . . . Even in the absence of such permits, carriers are required to comply with all LAX operating procedures and regulations, including the uninterrupted payment of landing fees. Official Statement Los Angeles International Airport Revenue Bonds 2002 Series A, p. 58. (Cover and cited pages attached)

These LAX bonds "do not constitute general obligations of the City, the State or any political subdivision of the State. Neither the faith and the credit nor the taxing power of the City, the State or any public agency, other than the Department, to the extent of the pledged revenues, is pledged to the payment of the principal of, premium, if any, or interest on, the subordinate 2002 Bonds." Id. p 2.

The City of Salt Lake City, Utah issued airport revenue bonds in 2004 with maturities extending to 2020 without long-term airline use agreements:

The City and Participating Airlines have entered into Amended and Restated Airport Use Agreements for a three-year term commencing July 1, 2003, and any such Agreement may be terminated by either party on June 30, 2006. If not terminated on June 30, 2006, any such Agreement continues on a year-to-year basis, and may be terminated by either party on June 30 of a subsequent year. Official Statement for Series 2004A-B Airport Revenue Refunding Bonds, p. E-1. (Cover and cited page attached)

Bond holders “will have no claim upon the taxing power or tax revenues of the City, the State of Utah or any political subdivision thereof.” *Id.*, Cover.

Comment 21

“Phase 1 projects are still being litigated. . . . A favorable decision for the Commenters would unravel any the [sic] Phase 1 projects . . .” (Page 21)

Response 21

The Petition for a Writ of Certiorari described in the Comment was denied on May 12, 2008. To date, petitioners have obtained no relief in any federal case. Those decisions are final. *Bensenville 1*, *Bensenville 2*, *St. John's 1*. A petition attacking the first OMP AIP grant was dismissed for lack of standing. *Bensenville 2*. The court's mandate has issued and petitioners did not seek review in the United States Supreme Court. On July 14, 2008, a petition attacking the second AIP grant was dismissed for lack of standing. (Order attached) No petition was filed challenging the third AIP grant. As to the PFC case, see General Response B.

It is true that Commenters continue to litigate. They appear to have doubts about the strength of their arguments. A spokesman for one of them was quoted saying “We throw as much as we can, and we try to see what sticks to the wall.” *Schaumburg Review*, May 13, 2008 (attached)³.

Comment 22

“Chicago's media claim that it will complete the “Total Master Plan” by 2014 . . . is little more than a public relations hoax.” (Pages 21-22)

Response 22

See General Response B. The Commenters are reckless in alleging “hoax” here and, similarly, “fraud” in other cases. They cannot support such extravagant and untrue claims, and when put to their proof refuse to back-up provocative words with evidence. These Commenters habitually resort to intemperate attacks on the City and the FAA. On similar claims, the *Bensenville 1* court said:

Like the FAA, the court has difficulty responding to these assertions because they are vague and conclusory, and the petitioners' failure to provide any greater detail in their reply brief suggests the weakness of these claims. 373 F.3d at 42.

They have yet to persuade a court that such claims have merit.

³ The spokesman is the mayor of Elk Grove Village, Illinois. Although his Village is a party in several cases relating to O'Hare development, it was not listed by the petitioners as a party in the Supreme Court case he was discussing. The City does not understand the Village's interest in that case, which solely involved an issue of religious belief at a cemetery located in Chicago. The City assumes that the Village's municipal resources were not used to support the Petition because that would raise serious questions under the First Amendment to the United States Constitution and Article I, § 3 of the Illinois Constitution.