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Sent via electronic mail

September 6, 2011

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, California 95814
<http://www.arb.ca.gov/lispub/comm/bclist.php>

Re: Comments on Proposed Regulation for In-Use Off-Road Diesel-Fueled Fleets – 15-Day Modified Regulation Order

Dear Clerk of the Board and Staff:

I am writing on behalf of United Air Lines, Inc. and Continental Airlines, Inc.¹ to provide the California Air Resources Board ("ARB") with comments on the proposed Regulation for In-Use Off-Road Diesel-Fueled Fleets (the "Rule"), California Code of Regulations (CCR), title 13, sections 2449 through 2449.3, posted August 22, 2011. The deadline for submitting comments is September 6, 2011.

ARB's rulemaking specifically targets airport ground support equipment ("GSE") owned and operated by airlines. Thus, United and Continental have a significant interest in the outcome of the proposed Rule, and we welcome this opportunity to provide comments.

A. The proposed "Fleet portions" definition is inconsistent with other provisions in the Rule and should be revised accordingly.

First, the proposed definition of "Fleet portions" in section 2449(c)(20) appears to require that a fleet portion be managed by different "responsible officials." This requirement contradicts section 2449(g)(2)(A), which states: "If the responsible official or designee is the same for several fleets or fleet portions, the responsible official or designee has the option of submitting a single affirmation for these fleets, as long as the single affirmation appropriately identifies each fleet covered by the affirmation." (Emphasis added). In order to address this inconsistency, we recommend that the Board either: (a)

¹ The merger between United and Continental became effective October 1, 2010. As a result of the merger, United and Continental now have the same parent corporation, which is named United Continental Holdings, Inc.

revise section 2449(c)(20) to omit the word “responsible.” (E.g., “... are managed by different ~~responsible~~ officials ...”), or (b) confirm in writing that fleet portions may be managed by the same responsible official or designee consistent with section 2449(g)(2)(A).

Second, the proposed definition of “Fleet portions” in section 2449(c)(20) states that the fleet portions must meet the adding vehicle requirements in section 2449(d)(6). However, the definition omits reference to the fleet ownership transfer requirements in section 2449(d)(5). Section 2449(d)(5) authorizes existing fleets to acquire other fleets or fleet portions “which are complying and reporting separately per section 2449(c)(20), without condition if the existing fleet and the acquired fleets were in compliance with the individual fleet requirements.” (Emphasis added).

The failure to reference section 2449(d)(5) in the definition of “Fleet portions” could be interpreted as eliminating, in certain circumstances, the “without condition” acquisition exemption for compliant fleets in section 2449(d)(5). To correct this ambiguity, we recommend that the Board revise the definition of “Fleet portions” to reference explicitly the requirements in section 2449(d)(5).

Recommended revisions are set forth below:

Section 2449(c)(20) “Fleet portions” – means that part of a fleet for which daily operations and dispatching are managed by different ~~responsible~~ officials because they are part of different subsidiaries, divisions, or other organizational substructures of a parent company, corporation or agency, which owns or controls the operations of the subsidiary, division, or organizational substructure, and the parent company, corporation, or agency elects to have some or all the fleet portions comply with the performance requirements separately and be reported separately. A fleet may have some fleet portions that meet the definition of captive attainment area fleet and some fleet portions that do not. However, the total max hp of the vehicles under common ownership or control of the parent company, corporation, or agency determines the fleet size. Once a fleet begins to comply and report separately as fleet portions, the fleet portions must continue to comply and report separately, and the fleet portions must meet either the adding vehicle requirements in section 2449(d)(6), or the fleet ownership transfer requirements in section 2449(d)(5) just as if they were separate fleets.

B. The Rule’s limitation regarding the acquisition of Existing BACT Credits arbitrarily excludes Credits accumulated through Reductions in Overall Fleet hp.

In section 2449(d)(5)(C), staff has proposed language to address what happens to existing BACT credits of fleets or fleet portions that are transferred to new ownership. The proposed language provides that if a fleet owner combines an acquired fleet (or fleet portion) for compliance and reporting purposes with the rest of his or her vehicles, the



fleet owner will only keep the BACT credits accumulated from retrofits and repowers, and all other BACT credits from the acquired fleet will expire immediately.

In other words, under section 2449(d)(5)(C), if a fleet owner combines an acquired fleet, the acquired fleet's BACT credits accumulated through reductions in overall fleet hp expire immediately. This limitation on existing BACT credits undermines the Board's prior decision to provide relief to fleets that have been adversely impacted by the economic recession. As ARB is aware, the recession has caused significant declines in emissions from GSE. Fleets should not be penalized through the loss of credits due solely to a transfer of fleet ownership.

At the very least, section 2449(d)(5)(C) should be modified to allow newly combined fleets to maintain all existing BACT credits, if the existing fleet and the acquired fleet were both in compliance with the Rule at the time acquisition. Such a modification would prevent noncompliant fleets from obtaining existing BACT credits through acquisition. But, it would reward compliant fleets by providing them with the flexibility to combine operations without the risk of losing existing BACT credits.

If you or your colleagues have questions or require additional information concerning the comments raised in this letter, please contact Robert Schlingman at (872) 825-8405.

Sincerely,



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United Continental Holdings, Inc.

Cc: Angela Foster-Rice, HDQLD
Suzanne Tedrow, WHQSE
Robert Schlingman, WHQSE