

Halifax, NS
lukacs@AirPassengerRights.ca



November 3, 2013

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, Ontario, K1A 0N9

Attention: Mr. Mike Redmond, Chief, Tariff Investigation

Dear Madam Secretary:

Re: Dr. Gábor Lukács v. Porter Airlines
Complaint concerning International Tariff Rules 1, 3.4, 15, 18, and 20
File No.: M 4120-3/13-05860
Reply

Please accept the following submissions in relation to the above-noted matter as a reply, pursuant to Rule 44 of the Agency’s *General Rules*, to Porter Airlines’ answer of October 28, 2013.

ISSUES

I.	Preliminary matters	3
	(a) Matters not before the Agency.	3
	(b) Porter Airlines ought not be invited to make further submissions.	3
II.	Porter Airlines’ Current Rules	4
III.	Proposed Rule 1: “Credit Shell”	5
IV.	Proposed Rule 20: Denied Boarding Compensation	6
	(a) Method of Payment	6
	(i) Disadvantages of travel vouchers instead of cash	6
	(ii) Failure to incorporate all conditions set out in Decision No. 342-C-A-2013	6

(b)	“Reconfirmation requirements”	7
V.	Flight advancement – the right to notification	9
(a)	Decision No. 344-C-A-2013 of the Agency: <i>res judicata</i>	9
(b)	No difficulty to “undertake” to notify passengers in Porter Airlines’ Domestic Tariff.	10
(c)	Porter Airlines ought to “undertake” to notify passengers on international routes too	10
VI.	Meal, hotel, and transportation vouchers	11
(a)	The Agency’s jurisdiction is not confined to matters listed in s. 122 of the <i>ATR</i>	11
(b)	Flight delay squarely falls within the matters listed in s. 122(c) of the <i>ATR</i>	13
(c)	Porter Airlines misstates Decision No. 252-C-A-2012 of the Agency	13
(d)	Porter Airlines misstates Decision No. 16-C-A-2013 of the Agency	14
(e)	The absence of the requirement to distribute meal, accommodation, and transportation vouchers to delayed passengers renders the tariff unreasonable	14
(i)	The interests and rights of passengers	15
(ii)	Porter Airlines’ ability to meet its statutory, commercial, and operational obligations	15
(iii)	Conclusion	16
VII.	Proposed Rule 15	17
(a)	Monetary payment pursuant to Rule 18 is independent of the obligation to re-protect	17
(b)	“Credit Shell” is not a reasonable form of refund	18
(c)	Proposed Rule 15(a)(iii)(b): test and burden of proof	19
(d)	Proposed Rule 15(c)	21
(i)	Clarity and reasonableness with respect to refunds	21
(ii)	Proposed Rule 15(c) misstates the test under Article 19 of the <i>Montreal Convention</i>	23
(iii)	Porter Airlines misstates Decision No. 249-C-A-2012 of the Agency	23
(iv)	Conclusions	24

EXHIBITS

A.	Porter Airlines’ General Conditions of Carriage	26
B.	Porter Airlines’ Domestic Tariff Rule 16	31

I. Preliminary matters

(a) Matters not before the Agency

The Applicant vehemently objects to Porter Airlines' request that "the Agency confirm the reasonableness of the Proposed Rules 16."

Porter Airlines' Answer (October 28, 2013), para. 66

The present complaint concerns Porter Airlines' International Tariff Rules 3.4, 15, 18, 20, and certain portions of Rule 1. The reasonableness of Rule 16 is not before the Agency in the present proceeding, and Porter Airlines did not propose any amendments to Rule 16 in the present proceeding.

(b) Porter Airlines ought not be invited to make further submissions

The Applicant objects to Porter Airlines' request that the Agency make a show cause order with respect to the reasonableness or clarity of some of the proposed tariff provisions.

Porter Airlines' Answer (October 28, 2013), para. 5(b)(i)

The Applicant submits that such a course of action would unnecessarily delay the implementation of tariff provisions that adequately protect passengers, and which the Agency requested all airlines, including Porter Airlines, to implement in July 2013.

Lukács Complaint (September 24, 2013), Exhibit "G"

The Applicant is particularly concerned about unnecessary delays due to Porter Airlines' poor record of timely compliance with the Agency's decisions. For example, as the Agency's records show, Porter Airlines did not comply with Decision No. 344-C-A-2013 of the Agency until mid-October 2013, that is, several weeks after the September 30, 2013 deadline set by the Agency.

Therefore, the Applicant is asking that with respect to the provisions that are found to be unclear and/or unreasonable that the Agency direct Porter Airlines to revise them, and that the Agency set a strict deadline for Porter Airlines to implement the revisions.

The Applicant is further asking the Agency to not tolerate Porter Airlines treating the deadlines set by the Agency as mere recommendations, and set out in its order concrete sanctions and consequence should Porter Airlines again fail to respect the deadline set by the Agency.

II. Porter Airlines' Current Rules

Porter Airlines conceded that the Current Rules require revisions, and made no submissions to oppose the Applicant's complaint that the Current Rules are unreasonable and unclear. Instead, Porter Airlines proposes certain amendments to the impugned tariff provisions.

Porter Airlines' Answer (October 28, 2013), para. 2

Thus, in the absence of any submissions by Porter Airlines to the contrary, the Applicant is asking that the Agency find that:

- (a) Current Rules 3.4 and 15 are unreasonable;
- (b) the absence of protection in the Current Rules for passengers affected by flight advancement is unreasonable;
- (c) the definition of "Event of Force Majeure" in Current Rule 1 is unreasonable;
- (d) Current Rule 20 is unreasonable and unclear.

III. Proposed Rule 1: “Credit Shell”

Porter Airlines proposes to introduce the following definition:

Credit Shell means a record with a payment but no flight used to hold a credit or credits for future flights, which (a) shall be valid for one year from the original ticket issuance date, towards the provision of a fare relating to a future flight, (b) may be applied toward the base fare, airlines surcharges, change fees, and government taxes and fees, (c) can be used one time only, whereby if the total cost of the transaction to which the Credit Shell is applied is less than the value of the Credit Shell, the residual value left from its use is forfeited, (d) may be used exclusively toward bookings in the name of the owner of the Credit Shell, provided however that a Credit Shell may be transferred to another traveler one time only, and the Credit Shell’s original expiration date shall continue to apply after any such transfer;

[Emphasis added.]

The Applicant submits that stipulations (a) and (c) of the definition of “Credit Shell” are unreasonable. Stipulation (a) is that a “Credit Shell” is valid only for one year, and (c) states that a “Credit Shell” can be used only once, and the remainder of the balance is forfeited.

The “Credit Shell” refers to payments made by passengers. Thus, it appears that a “Credit Shell” is not a form of goodwill credit by Porter Airlines to passengers, but rather a credit for consideration received by Porter Airlines.

Stipulations (a) and (c) purport to permit Porter Airlines to keep some or all of the consideration offered by passengers without providing any services in exchange. The absence of services (consideration) provided to passengers in return would result in unjust enrichment of Porter Airlines.

Example. A passenger has a “Credit Shell” of \$950.00, arising from an original ticket issued on August 2, 2013, for travel in May 2014. If the “Credit Shell” is not used by August 1, 2014, then Porter Airlines keeps the entire balance of \$950.00 without providing the passenger with any services (consideration) in return. Moreover, if the passenger purchases an itinerary for \$450.00 using the “Credit Shell,” then Porter Airlines keeps the remaining balance of \$500.00 without providing the passenger with any services (consideration) in return. In both cases, Porter Airlines is unjustly enriched at the expense of the passenger without providing services (consideration).

Although Porter Airlines conceded that there is no presumption of reasonableness with respect to tariff provisions, it made no submissions on the reasonableness of the terms of the “Credit Shell.”

Porter Airlines’ Answer (October 28, 2013), para. 6(b)

Therefore, the unjust enrichment of Porter Airlines provided by the “Credit Shell” fails to strike the balance between the rights of passengers and the ability of Porter Airlines to meet its statutory, commercial, and operational obligations, and hence stipulations (a) and (c) of the “Credit Shell” are unreasonable.

IV. Proposed Rule 20: Denied Boarding Compensation

Porter Airlines' Proposed Rule 20 is a substantial improvement compared to the Current Rule 20; however, Proposed Rule 20 still contains certain unreasonable and/or unclear provisions.

(a) Method of Payment

(i) Disadvantages of travel vouchers instead of cash

Porter Airlines appears to be challenging the Applicant's submissions concerning the disadvantages for passengers of accepting vouchers instead of cash, and states that little weight ought to be attributed to this issue. The Applicant respectfully disagrees.

The Agency may and ought to take judicial notice of the common knowledge that cash or equivalent, which constitutes legal tender, is more valuable than any kind of coupons or vouchers, which can be used only for payment at a specific business or service provider. Vouchers, as acknowledged by Porter Airlines, are subject to restrictions imposed by Porter Airlines (including an expiry date), while legal tender is not subject to these restrictions.

The conditions on the offering of travel vouchers in lieu of denied boarding compensation set out in *Lukács v. Air Canada*, 342-C-A-2013 mitigate these disadvantages; however, it is important to bear in mind that the restrictions were imposed by the Agency precisely for the purpose of mitigating the disadvantage to passengers.

(ii) Failure to incorporate all conditions set out in Decision No. 342-C-A-2013

In Decision No. 342-C-A-2013, the Agency imposed the following conditions on the offering of travel vouchers in lieu of denied boarding compensation:

- (R1) carrier must inform passengers of the amount of cash compensation that would be due, and that the passenger may decline travel vouchers, and receive cash or equivalent;
- (R2) carrier must fully disclose all material restrictions before the passenger decides to give up the cash or equivalent payment in exchange for a travel voucher;
- (R3) carrier must obtain the signed agreement of the passenger, confirming that the passenger was provided with the aforementioned information, prior to providing travel vouchers in lieu of compensation;
- (R4) the amount of the travel voucher must be not less than 300% of the amount of cash compensation that would be due;

- (R5) passengers are entitled to exchange the travel vouchers to cash at the rate of \$1 in cash being equivalent to \$3 in travel vouchers within one (1) month.

The Applicant submits that while Proposed Rule 20 incorporates (R2), (R4), and (R5), it fails to incorporate (R1), and fails to fully incorporate (R3).

Condition (R1) requires a carrier to inform passengers about the amount of cash compensation that would be due, and inform passengers about the right to decline travel vouchers, and receive cash or equivalent. This condition is extremely important to ensure that passengers make an informed decision, and that passengers are aware of their rights.

Condition (R3) requires the carrier to not simply obtain the agreement of the passenger to accept travel vouchers, but also to confirm that the passenger was provided the information required under (R1) (about the amount of cash compensation that would be due and the right to refuse travel vouchers), and the information required under (R2) (about the restrictions applicable to travel vouchers). The purpose of condition (R3) is to ensure that the passengers are provided with all information necessary for deciding whether to accept travel vouchers.

Proposed Rule 20 only requires Porter Airlines to obtain a written agreement from the passenger to accept vouchers in lieu of cash or cheque payment, but it omits the requirement to obtain written confirmation that the passengers were provided with the information required under (R1) and (R2).

Thus, Proposed Rule 20 fails to incorporate (R1), and fails to fully incorporate (R3). Although Porter Airlines conceded that there is no presumption of reasonableness with respect to tariff provisions, it made no submissions as to why it should not be subject to the obligation set out in (R1) to inform passengers about their rights or to the full extent of (R3).

Porter Airlines' Answer (October 28, 2013), para. 6(b)

Therefore, the Applicant submits that the absence of (R1) and the full incorporation of (R3) renders Proposed Rule 20 unreasonable, and Porter Airlines ought to be ordered to fully incorporate (R1) and (R3) into its Rule 20.

(b) “Reconfirmation requirements”

Proposed Rule 20 contains the following provision:

If you are denied boarding involuntarily on a flight, you are entitled to a payment of “denied boarding compensation” from Carrier unless:

- you have not fully complied with the Carrier’s ticketing, check-in and reconfirmation requirements, or you are not acceptable for transportation under the Carrier’s usual rules and practices; or

[Emphasis added.]

The Applicant submits that the reference to “reconfirmation requirements” renders Proposed Rule 20 unclear and/or unreasonable for a number of reasons.

First, Porter Airlines’ General Conditions of Carriage (Exhibit “A”) state that:

3. Reconfirmation of flights is not required, [...]

Thus, Proposed Rule 20 appears to be incorporating a nonexistent requirement. This certainly creates substantial confusion and lack of clarity, at the very least.

Second, the phrase “reconfirmation” is nowhere defined in Porter Airlines’ International Tariff.

Third, reconfirmation of reservations is an outdated requirement that has been abandoned by the industry, given that the standard practice is to issue confirmed reservations.

Fourth, it is virtually impossible for a passenger to prove that s/he did reconfirm the reservation. Consequently, conditioning the payment of denied boarding compensation on some sort of reconfirmation would effectively deprive passengers of their right to be paid denied boarding compensation.

Therefore, it is submitted that the reference to “reconfirmation requirements” renders Proposed Rule 20 both unclear and unreasonable, and the word “reconfirmation” ought to be deleted from Proposed Rule 20.

V. Flight advancement – the right to notification

Porter Airlines has addressed a substantial portion of the Applicant's concerns with respect to the rights of passengers affected by flight advancement; however, the issue of the right of passengers to be informed about flight advancements remains outstanding.

Proposed Rule 18(c) provides that:

Passengers have a right to information on flight times and schedule changes. In the event of a delay or schedule change, the carrier will make reasonable efforts to inform the passengers of delays and schedule changes, and, to the extent possible, the reasons for them, including that the Carrier will make best efforts to inform passengers of advancements of scheduled flight departures.

[Emphasis added.]

The Applicant submits that in the case of flight advancement, "best efforts" is not sufficient, and Porter Airlines must "undertake" to inform passengers affected by such an event.

(a) Decision No. 344-C-A-2013 of the Agency: *res judicata*

In Decision No. LET-A-112-2003, the Agency held, under the heading "Passenger Notification," that:

The Agency is of the opinion that Air Transat should undertake to notify passengers of all schedule irregularities, not just flight advancements.

In *Lukács v. Porter Airlines*, 344-C-A-2013, the Agency held that:

[63] [...] When the air carrier advances the scheduled departure of a flight, the consequences may be more severe than a delay for the passenger and it follows that the duty to inform should be no less onerous.

[64] [...] The absence of a tariff provision that imposes on Porter a requirement to "undertake" to inform passengers of flight advancements would severely limit the recourses available to passengers affected by those advancements, and would certainly be disadvantageous.

[65] The Agency is of the opinion that the commitment to make "reasonable efforts" to inform passengers, insofar as such commitment pertains to flight advancements, is unreasonable. [...]

Porter Airlines did not seek leave to appeal Decision No. 344-C-A-2013 of the Agency, and the deadline for filing a motion for leave to appeal has long expired. Porter Airlines did not make an application pursuant to s. 32 of the *Canada Transportation Act* to review and/or amend Decision No. 344-C-A-2013 either.

Consequently, Porter Airlines has accepted the Agency's conclusions in Decision No. 344-C-A-2013, and due to the doctrine of *res judicata*, Porter Airlines is precluded from relitigating the same issue in the present proceeding.

(b) No difficulty to “undertake” to notify passengers in Porter Airlines’ Domestic Tariff

In response to Decision No. 344-C-A-2013 of the Agency, Porter Airlines amended its Domestic Tariff Rule 16(c) to read as follows (Exhibit “B”):

Schedules are subject to change. Passengers have a right to information on flight times and schedule changes, and the Carrier will make reasonable efforts to inform passengers of flight delays, and schedule changes and, to the extent possible, the reasons for them. Carrier will also undertake to inform passengers of any advancement of departure times.

[Emphasis added.]

As Exhibit “B” demonstrates, Porter Airlines does not have any difficulty to “undertake” to inform passengers on domestic itineraries about advancement of departure times. One struggles to understand how international itineraries differ from domestic ones with respect to informing passengers, especially since Porter Airlines did not address this point in its submissions.

Thus, Porter Airlines’ submissions on this point are disingenuous, and constitute a collateral attack on Decision No. 344-C-A-2013 of the Agency, in an attempt to relitigate the same issue.

(c) Porter Airlines ought to “undertake” to notify passengers on international routes too

As noted by the Agency in Decision No. 344-C-A-2013, the purpose of the requirement to “undertake” to inform passengers of flight advancement is precisely to provide an adequate recourse for passengers affected by these advancements.

In considering this issue, it is important to bear in mind that the consequence of a passenger not being notified about a flight advancement is not merely a delay of a few hours, but rather the passenger missing the flight, and possibly forfeiting the ability to travel. For example, in the holiday season in December or in the vacation season in August, it may be impossible for the passenger to find a seat, even at a business class fare, on any carrier on a short notice.

Consequently, in the case of flight advancements affecting passengers on international itineraries, Porter Airlines ought to bear all risks and consequences associated with passengers missing their flights because they did not know about the flight advancement. Porter Airlines making merely a “best effort” to inform such passengers ought not relieve Porter Airlines from these risks, consequences, and liabilities, because it is inconsistent with passengers’ fundamental right to travel on the itinerary they paid for. Hence, Porter Airlines ought to be required to “undertake” to inform passengers affected by flight advancement.

VI. Meal, hotel, and transportation vouchers

The *Code of Conduct of Canada's Airlines* provides, among other things, that:

Passengers have a right to punctuality.

- (a) If a flight is delayed and the delay between the scheduled departure of the flight and the actual departure of the flight exceeds 4 hours, the airline will provide the passenger with a meal voucher.
- (b) If a flight is delayed by more than 8 hours and the delay involves an overnight stay, the airline will pay for overnight hotel stay and airport transfers for passengers who did not start their travel at that airport.
- (c) If the passenger is already on the aircraft when a delay occurs, the airline will offer drinks and snacks if it is safe, practical and timely to do so. If the delay exceeds 90 minutes and circumstances permit, the airline will offer passengers the option of disembarking from the aircraft until it is time to depart.

The Applicant is asking the Agency to order Porter Airlines to incorporate these obligations into its International Tariff. While Porter Airlines incorporated (c) as Proposed Rule 18(d), Porter Airlines refuses to incorporate (a) and (b) into its International Tariff, and vehemently argues against them.

Porter Airlines argues that the Agency lacks jurisdiction to prescribe to Porter Airlines a requirement to distribute meal, hotel, and transportation vouchers in the case of flight delays. The Applicant respectfully disagrees with Porter Airlines for a number of reasons.

(a) The Agency's jurisdiction is not confined to matters listed in s. 122 of the *ATR*

Porter Airlines appears to mistakenly believe that the Agency's jurisdiction with respect to tariffs is limited to the matters listed in s. 122 (or s. 107) of the *Air Transportation Regulations* (the "ATR"), which governs the bare minimum of matters that a tariff must address. The Applicant respectfully disagrees with Porter Airlines' submissions concerning the Agency's jurisdiction.

Section 86 of the *Canada Transportation Act*, the enabling legislation of the Agency, states that:

86. (1) The Agency may make regulations

∴

- (h) respecting traffic and tariffs, fares, rates, charges and terms and conditions of carriage for international service and
- (i) providing for the disallowance or suspension by the Agency of any tariff, fare, rate or charge,

- (ii) providing for the establishment and substitution by the Agency of any tariff, fare, rate or charge disallowed by the Agency,

[Emphasis added.]

Based on this mandate, sections 111(1) and 113 of the *ATR* were promulgated:

111. (1) All tolls and terms and conditions of carriage, including free and reduced rate transportation, that are established by an air carrier shall be just and reasonable and shall, under substantially similar circumstances and conditions and with respect to all traffic of the same description, be applied equally to all that traffic.

113. The Agency may

- (a) suspend any tariff or portion of a tariff that appears not to conform with subsections 110(3) to (5) or section 111 or 112, or disallow any tariff or portion of a tariff that does not conform with any of those provisions; and
- (b) establish and substitute another tariff or portion thereof for any tariff or portion thereof disallowed under paragraph (a).

[Emphasis added.]

Parliament conferred upon the Agency broad regulatory powers with respect to carriers' tariffs. These powers include suspending, disallowing, establishing, and substituting any tariff provision. Section 113 of the *ATR* means that if a tariff or a portion of a tariff is found to fail to be just and reasonable, contrary to s. 111(1) of the *ATR*, then the Agency may disallow it, and may substitute it with another tariff or portion of a tariff.

Thus, the Agency's powers to disallow and substitute unreasonable tariff provisions is not confined to the matters set out in s. 122 of the *ATR*, but rather extends to the entirety of the tariff, including provisions that ought to be there, but are absent.

For example, although the *ATR* contains no specific provisions about the rights of passengers to notice about schedule changes, the Agency imposed on Porter Airlines such an obligation in *Lukács v. Porter Airlines*, 16-C-A-2013 (para. 87), and held that "the absence of a similar provision in Porter's Existing Tariff Rules would render Proposed Tariff Rule 18(a) unreasonable, if filed with the Agency."

Therefore, contrary to Porter Airlines' submissions, s. 86(1) of the *Canada Transportation Act* and ss. 111(1) and 113 of the *ATR* confer upon the Agency jurisdiction to examine whether the absence of tariff provisions requiring Porter Airlines to distribute meal, accommodation, and transportation vouchers in the case of flight delay renders Porter Airlines' International Tariff unreasonable within the meaning of s. 111(1) of the *ATR*.

(b) Flight delay squarely falls within the matters listed in s. 122(c) of the ATR

The bare minimum of matters that must be addressed in an international tariffs is governed by s. 122 of the *ATR*, which states that:

122. Every tariff shall contain

⋮

(c) the terms and conditions of carriage, clearly stating the air carrier's policy in respect of at least the following matters, namely,

⋮

(v) failure to operate the service or failure to operate on schedule,

Flight delay is certainly a form of failure to operate on schedule. Consequently, s. 122(c)(v) of the *ATR* requires Porter Airlines to state its policy in respect to flight delay in its tariff.

Therefore, even if the Agency's jurisdiction were confined to matters listed under s. 122 of the *ATR* (which is clearly not the case), the issue of distributing meal, accommodation, and transportation vouchers to delayed passengers would still squarely be within the Agency's jurisdiction.

(c) Porter Airlines misstates Decision No. 252-C-A-2012 of the Agency

In paragraph 44 of its answer, Porter Airlines cites a single sentence from the Agency's decision in *Lukács v. Air Canada*, 252-C-A-2012 in support of its claim that "there is no requirement that carriers distribute such vouchers at all."

Unfortunately, Porter Airlines has taken the sentence out of its context. The issue was the clarity of a tariff provision, and not its reasonableness. Furthermore, the full text of the Agency's analysis and findings on this issue reads as follows:

[51] While subparagraph 107(1)(n) of the *ATR* requires the carrier to clearly state its policy in respect of a number of matters, it does not specifically require the carrier to stipulate the value of a meal voucher in its tariff. The Agency considers that the evidence provided by Mr. Lukács does not show that Proposed Tariff Rule 12.7 lacks clarity for failing to stipulate the meal voucher amount. Furthermore, the Agency notes WestJet's submission that there are too many variables, including the location of the airport, and the times of day at which a flight delay begins and ends, to allow a carrier to establish in a tariff a set amount. WestJet's statement that a meal voucher will be provided is, in the Agency's opinion, sufficient to meet WestJet's tariff obligation of clarity.

[Emphasis added.]

Thus, Decision No. 252-C-A-2012 does not support Porter Airlines' position that there is no requirement to provide meal vouchers; rather, it states that the value of the meal voucher does not need to be specified in a carrier's tariff.

(d) Porter Airlines misstates Decision No. 16-C-A-2013 of the Agency

In paragraph 43 of its answer, Porter Airlines refers to Proposed Sub-Rule 18.1, which states that Porter Airlines "may, in its sole discretion, issue meal, hotel and/or ground transportation vouchers to passengers affected by a delay or a Flight Advancement." Porter Airlines then goes on to state that:

This provision was accepted by the Agency as part of Porter's response to the complaint underlying 16-C-A-2013, which specifically engaged the entitlements of passengers under the ATR and *Montreal Convention*.

Unfortunately, Porter Airlines misstates the issues in the complaint giving rise to Decision No. 16-C-A-2013. The issue with respect to Sub-Rule 18.1 was specifically its compliance with Article 19 of the *Montreal Convention*.

There is no doubt that Porter Airlines issuing meal, hotel, and transportation vouchers to delayed passengers at its own discretion is not inconsistent with the *Montreal Convention*. Consequently, the reasonableness of the portion of Sub-Rule 18.1 cited by Porter Airlines was not challenged or considered in Decision No. 16-C-A-2013.

The present complaint is not about Porter Airlines' discretion to issue meal, accommodation, and transportation vouchers to whoever it wishes to, but rather the circumstances in which Porter Airlines must issue such vouchers to passengers affected by flight delay.

(e) The absence of the requirement to distribute meal, accommodation, and transportation vouchers to delayed passengers renders the tariff unreasonable

The Applicant never stated that the *Montreal Convention* requires the provision of meal, accommodation, and transportation vouchers to delayed passengers. Rather, the Applicant's submission is that the absence of a tariff provision requiring Porter Airlines to distribute such vouchers to delayed passengers for long delays, as described in the *Code of Conduct of Canada's Airlines*, renders Porter Airlines' International Tariff unreasonable within the meaning of the ATR.

Porter Airlines conceded that the legal test applicable to the determination of the reasonableness of tariff provisions is the balancing test, and does not dispute the Applicant's submissions on this point.

(i) The interests and rights of passengers

Meal, accommodation, and transportation vouchers provide an immediate and standardized remedy to delayed passengers, and relieve them from the financial burden of paying for the expenses in advance (in expectation of Porter Airlines reimbursing the expenses). While these expenses may be trifles for wealthy passengers travelling alone, the expenses can be quite a serious financial burden for less wealthy families travelling with children.

Issuing meal, accommodation, and transportation vouchers also spares delayed passengers the time consuming exercise of submitting their claims and receipts to Porter Airlines, which would cause further loss of time and productivity to passengers who have already been disadvantaged by a delay.

Porter Airlines correctly notes that meal, accommodation, and transportation vouchers do not always cover all expenses incurred by passengers as a result of a delay, and the Applicant agrees that they do not always fully substitute making a claim. Indeed, in some cases, a passenger may need to submit a claim for the costs of meals, accommodation, or transportation incurred in excess of the value of vouchers. Nevertheless, meal, accommodation, and transportation vouchers can mitigate the inconvenience, financial burden, and administrative hassle for many (even if not all) delayed passengers.

Thus, it is submitted that delayed passengers have a legitimate interest in being issued meal, accommodation, and transportation vouchers in the case of longer delays (as set out in the *Code of Conduct of Canada's Airlines*).

(ii) Porter Airlines' ability to meet its statutory, commercial, and operational obligations

Although Porter Airlines was aware of and specifically acknowledged in its submissions the balancing test for determining the reasonableness of tariff provisions, it chose not to make any submissions as to how the Agency imposing on it the requirement to fully incorporate the *Code of Conduct of Canada's Airlines* into its tariff would affect Porter Airlines' ability to meet its statutory, commercial, and operational obligations. The Applicant submits that the reason for this omission is that imposing such a requirement on Porter Airlines would not affect at all its ability to meet its statutory, commercial, and operational obligations.

First, the obligation to reimburse passengers, one way or another, for reasonable expenses occasioned by delay is consistent with Article 19 of the *Montreal Convention*.

Second, Porter Airlines' competitors (Air Canada, Air Transat, Sunwing, and WestJet) have all fully incorporated the *Code of Conduct of Canada's Airlines* into their tariffs. Thus, Porter Airlines would suffer no competitive disadvantage by doing the same.

Third, incorporating the requirement to distribute meal, accommodation, and transportation vouchers to delayed passengers into Porter Airlines' tariff would not affect Porter Airlines' ability to meet its operational obligations. Indeed, Air Canada, Air Transat, Sunwing, and WestJet have been sub-

ject to the same requirement for quite a while, and it has not impeded their ability to meet their operational obligations.

(iii) Conclusion

While passengers have a legitimate interest in being issued meal, accommodation, and transportation vouchers in the case of longer delays (as set out in the *Code of Conduct of Canada's Airlines*), doing so would not affect Porter Airlines' ability to meet its statutory, commercial, and operational obligations.

Moreover, the incorporation of the *Code of Conduct of Canada's Airlines* has become an industry standard for Canadian airlines that Porter Airlines' competitors have implemented in their respective tariffs.

Therefore, the absence of the incorporation of the *Code of Conduct of Canada's Airlines* into Porter Airlines' International Tariff, including the requirement to distribute meal, accommodation, and transportation vouchers to delayed passengers, renders Porter Airlines' International Tariff unreasonable.

VII. Proposed Rule 15

While Proposed Rule 15 may represent substantial progress compared to the Current Rule 15, which purports to relieve Porter Airlines from any form of re-protection or refund to passengers, the former still suffers from a number of shortcomings that render it unreasonable in its present form.

(a) Monetary payment pursuant to Rule 18 is independent of the obligation to reprotect

Proposed Rule 15(a) requires Porter Airlines to offer passengers choice between one or more of five remedial options, including:

- v. a monetary payment to the passenger for any amounts to which the passenger may be entitled pursuant to Rule 18 of this Tariff.

This suggests that Porter Airlines views the monetary payment pursuant to Rule 18 as an alternative to reprotecting passengers, instead of viewing the two as working together, in tandem.

It is not clear whether Proposed Rule 15(a) is simply unclear, or if Porter Airlines intended it to be read as monetary compensation under (v) being an alternative to re-protection. The latter interpretation is reinforced by paragraph 25(b) of its answer, which refers to three options, at the passenger's choice:

- (i) alternative transportation to their destination within a reasonable time at no additional charge; or
- (ii) where the flight is interrupted at a connection point, return to the point of origin and a refund or credit for unused segments or the full ticket in the indicated circumstances; and
- (iii) compensation for resulting damages under Rule 18, which incorporates the principles of Article 19 of the *Montreal Convention* per the Agency's decision in 16-C-A-2013;

The Applicant submits that the presence of (v) renders Proposed Rule 15(a) at the very least unclear, but possibly also unreasonable, depending on its intended meaning.

The Applicant submits that Rule 15 ought to clearly state that passengers are entitled to monetary payment pursuant to Rule 18 regardless of how they choose to be reprotected (transportation to destination, transportation to point of origin, or refund). For example, in *Lukács v. United Airlines*, 2009 MBQB 29, the passenger was unable to travel because the passenger's flight was cancelled. The passenger received a full refund from the airline, but the court also ordered the airline to reimburse the passenger, pursuant to Article 19 of the *Montreal Convention*, for out-of-pocket expenses incurred in relation to ground transportation to and from the airport.

(b) “Credit Shell” is not a reasonable form of refund

Proposed Rule 15(a) requires Porter Airlines to offer passengers choice between one or more of five remedial options, including:

- iii. a refund of the fare and charges paid by the passenger for each unused segment, and for segments already flown if (a) they no longer serve the purpose for which the passenger undertook such travel, and (b) the Schedule Irregularity was within the control of the Carrier;
- iv. a Credit Shell in the amount described in sub-section (iii) above;

The only, but very substantial, difference between (iii) and (iv) is that the former calls for a refund of the fare and charges paid by passengers, while the latter allows Porter Airlines to keep the passenger’s payment, and issue a “Credit Shell” instead.

In *Lukács v. WestJet*, LET-C-A-83-2011, the Agency held that any compensation paid in accordance with the tariff is to be paid in the form of cash, cheque, credit to a passenger’s credit card, or any other form acceptable to the passenger. This finding was reiterated by the Agency in *Lukács v. WestJet*, 227-C-A-2013 in the specific context of denied boarding. The Applicant submits that the same conclusion is applicable with respect to the refund of fares and charges in the case of flight cancellation or flight advancement: passengers who paid cash or equivalent are entitled to be refunded in the same manner.

As explainer earlier, the “Credit Shell” is a highly restricted instrument: it is valid only for one year from the original ticket’s issuance date, and it can be used only once; any balance remaining after its use is forfeited by the passenger. These restrictions have a high potential of unjust enrichment for Porter Airlines, without providing any benefit to passengers.

Allowing Porter Airlines to offer passengers a “Credit Shell” instead of a refund carries the same risks and disadvantages for passengers as offering travel vouchers in lieu of denied boarding compensation.

Lukács Complaint (September 24, 2013), pp. 28-30

The difference is that Rule 15(iv) concerns the refund of money paid by passengers, while Rule 20 deals with compensation for inconvenience. Furthermore, Proposed Rule 20 contains a number of safeguards (as set out in Decision No. 342-C-A-2013) to protect passengers, and to ensure that passengers can make an informed decision. It is submitted that the absence of such safeguards from Proposed Rule 15(a), combined with the very restrictive and disadvantageous nature of a “Credit Shell,” renders Proposed Rule 15(a)(iv) unreasonable.

The Applicant asks the Agency to find that a future credit is not a proper form of refunding passengers money paid or services that were not provided, and that Proposed Rule 15(a)(iv) is unreasonable.

In the alternative, the Applicant is asking the Agency to impose the same restrictions on Porter Airlines providing a “Credit Shell” in lieu of a refund as it did with respect to travel vouchers in lieu of denied boarding compensation in Decision No. 342-C-A-2013:

- (R1) carrier must inform passengers of the amount of cash refund that would be due, and that the passenger may decline travel vouchers, and receive cash or equivalent;
- (R2) carrier must fully disclose all material restrictions before the passenger decides to give up the cash or equivalent payment in exchange for a travel voucher;
- (R3) carrier must obtain the signed agreement of the passenger, confirming that the passenger was provided with the aforementioned information, prior to providing travel vouchers in lieu of cash refund;
- (R4) the amount of the travel voucher must be not less than 300% of the amount of cash refund that would be due;
- (R5) passengers are entitled to exchange the travel vouchers to cash at the rate of \$1 in cash being equivalent to \$3 in travel vouchers within one (1) month.

Furthermore, the Applicant reiterates his earlier submissions that stipulations (a) and (c) of the “Credit Shell,” which purport to allow Porter Airlines to keep passengers’ money without providing services in return, are unreasonable and ought to be disallowed in cases where a “Credit Shell” is used in lieu of a refund (rather than a goodwill payment).

(c) Proposed Rule 15(a)(iii)(b): test and burden of proof

Proposed Rule 15(a) requires Porter Airlines to offer passengers choice between one or more of five remedial options, including:

- iii. a refund of the fare and charges paid by the passenger for each unused segment, and for segments already flown if (a) they no longer serve the purpose for which the passenger undertook such travel, and (b) the Schedule Irregularity was within the control of the Carrier;

[Emphasis added.]

The Applicant submits that Proposed Rule 15(a)(iii)(b) is overly restrictive with respect to the rights of passengers, and imposes an unreasonable and impossible burden of proof on passengers, because passengers do not always have evidence about the cause of a Schedule Irregularity.

The Applicant submits that the burden of proof ought to rest with the carrier, rather than the passengers, and that the test ought to incorporate the principle of “all reasonable measures.”

Recently, in *Lukács v. Air Canada*, 204-C-A-2013, the Agency considered the question of what conditions a carrier must meet in order to relieve itself from the obligation to pay denied boarding compensation in the case of aircraft substitution with one of a smaller capacity. The Agency made the following key findings:

- If the carrier is able to demonstrate that the events prompting the substitution of an aircraft were beyond its control, then the carrier should have the flexibility to control its fleet and determine when an aircraft should be substituted for operational and safety reasons (para. 41).
- The burden must rest with the carrier to establish that the events prompting the substitution were beyond its control and that it took all reasonable measures to avoid the substitution or that it was impossible for the carrier to take such measures (para. 44).
- In order to relieve itself from the obligation to pay denied boarding compensation, the carrier must demonstrate that:
 - (1) substitution occurred for operational and safety reasons beyond its control, and
 - (2) it took all reasonable measures to avoid the substitution or that it was impossible for the carrier to take such measures.

If the carrier fails to demonstrate both of these, then compensation should be due to the affected passengers (para. 44).

Based on these findings, the Agency concluded that, in the absence of specific language that establishes context or qualifies Air Canada's exemption from paying denied boarding compensation, Rule 245(E)(1)(b)(iv) was unreasonable (para. 45).

The Applicant submits that the same principles are applicable to the obligation to refund passengers for the fare and charges paid for segments already flown that no longer serve the purpose for which the passenger undertook the travel. The Applicant submits that Porter Airlines ought to be able to relieve itself from this obligation only if it demonstrates that:

- (C1) the Schedule Irregularity occurred for reasons beyond its control, and
- (C2) it took all reasonable measures to avoid the Schedule Irregularity or that it was impossible for the carrier to take such measures.

Based on the Agency's findings in Decision No. 204-C-A-2013 with respect to Air Canada's Rule 245(E)(1)(b)(iv), the Applicant submits that Proposed Rule 15(a)(iii)(b) is unreasonable without imposing on Porter Airlines the requirement to demonstrate (C1) and (C2).

(d) Proposed Rule 15(c)

Proposed Rule 15(c) states that:

The provisions of this Rule are not intended to make the Carrier responsible in all cases for acts of nature or for the acts of third parties that are not deemed servants and/or agents of the Carrier under applicable law or international conventions, and all the rights set forth herein are subject to the following exception, namely, that the Carrier shall not be liable for damage occasioned by a Schedule Irregularity if the Carrier, and its employees and agents, took all reasonable steps that could reasonably be required to avoid the damage or if it was impossible to take such measures.

(i) Clarity and reasonableness with respect to refunds

Proposed Rule 15(c) creates the impression that Porter Airlines does not have to reprotect or refund passengers for unused portions of their tickets if it can demonstrate the “all reasonable measures” defense.

If this was not Porter Airlines’ intent, then Proposed Rule 15(c) is simply unclear. If it was Porter Airlines’ intent, then Proposed Rule 15(c) is unreasonable, and it is inconsistent with the Agency’s findings in *Lukács v. Porter Airlines*, 344-C-A-2013 (para. 88).

Proposed Rule 15(c) confuses two different rights of passengers who are affected by a flight cancellation, denied boarding, or flight advancement:

- (P1) the right for damages occasioned by the cancellation, denied boarding, or flight advancement (Proposed Rule 18);
- (P2) the right for reprotection or refund of unused portion (Proposed Rule 15(a)(i)-(iii)).

The difference between the nature of these two obligations is very substantial. A carrier can relieve itself from the obligation under (P1) by demonstrating that it and its agents and employees have taken all reasonable steps necessary to avoid damage or that no such measures were available. But a carrier cannot relieve itself from the obligation under (P2).

Passengers are entitled to reprotection or a refund regardless of the reason for their inability to travel, as long as the passengers are not culpable for it. Indeed, more than 9 years ago, in Decision No. 28-A-2004, the Agency recognized the fundamental right of passengers to be refunded for the unused portions of their tickets if the carrier is unable to provide transportation on its services or on the services of other carrier(s) within a reasonable period of time:

By Decision No. LET-A-166-2003 dated August 7, 2003 [...] the Agency advised Air Transat that Rule 6.3 of its tariff was not just and reasonable within the mean-

ing of subsection 111(1) of the ATR, in that it does not provide adequate options to passengers affected by a schedule irregularity, and does not protect passengers from events that are beyond the passengers' control, and, therefore, does not allow passengers any recourse if they are unable to connect to other air carriers or alternate modes of transportation such as cruise ships or trains.

In the same decision, the Agency substituted Air Transat's International Tariff Rule 6.3(d) with the following provision:

6.3(d) If the Carrier is unable to provide reasonable alternative transportation on its services or on the services of other carrier(s) within a reasonable period of time, then it will refund the unused ticket or portions thereof.

As this decision of the Agency demonstrates, passengers do have a fundamental right to a refund of their fares if the carrier is unable to transport them for any reason that is outside the passengers' control. This right exists regardless of the cause of the carrier's inability to transport passengers, as long as the reason is outside the passengers' control. (Obviously, no carrier is responsible for a passenger's failure to check-in on time or to carry adequate travelling documents.) In particular, the carrier cannot keep the fare paid by passengers and refuse to provide a refund on the basis that its inability to provide transportation was due to certain events.

Most recently, in *Lukács v. Porter Airlines*, 344-C-A-2013, the Agency considered Proposed (Domestic) Tariff Rule 16(f) of Porter Airlines, and reached the same conclusion:

[88] The Agency agrees with Mr. Lukács, and finds that it is unreasonable for Porter to refuse to refund the fare paid by a passenger because of its cancellation of a flight, even if the cause is an event beyond Porter's control.

Thus, taking "all reasonable measures" does not relieve Porter Airlines from its obligation to refund unused portions of tickets or reprotect passengers affected by flight cancellation, denied boarding, or flight advancement.

Taking "all reasonable measures" is only relevant to the obligation to refund fares and charges for segments already flown, but which no longer serve the purpose for which the passenger undertook to travel, as explained in the previous subsection.

Therefore, it is submitted that Proposed Rule 15(c) is either unclear or it is unreasonable in that it purports to relieve Porter Airlines from the obligation to refund the unused portion of tickets to passengers, contrary to the Agency's findings in *Lukács v. Porter Airlines*, 344-C-A-2013.

(ii) Proposed Rule 15(c) misstates the test under Article 19 of the *Montreal Convention*

The first half of Proposed Rule 15(c) incorrectly focuses on the cause of the so-called “Schedule Irregularity” rather than on how Porter Airlines reacts to it, and thus misstates the test under Article 19 of the *Montreal Convention*. Indeed, as the Agency explained in *Lukács v. Porter Airlines*, 16-C-A-2013, what determines liability for delay is not the cause of the delay, but rather how the airline reacts to the delay:

[105] Accordingly, what is at issue, in terms of avoiding liability for delay, is not who caused the delay but, rather, how the carrier reacts to a delay. In short, did the carrier’s servants and agents do everything they reasonably could in the face of air traffic control delays, security delays on releasing baggage, delays caused by late delivery of catered supplies or fuel to the aircraft and so forth, even though these may have been caused by third parties who are not directed by the carrier?

[Emphasis added.]

Proposed Rule 15(c) is inconsistent with these findings of the Agency, and thus it ought to be disallowed as being either unclear or unreasonable.

(iii) Porter Airlines misstates Decision No. 249-C-A-2012 of the Agency

At paragraph 28, Porter Airlines incorrectly suggests that a provision similar to or identical to Proposed Rule 15(c) was held to be reasonable by the Agency in Decision No. 249-C-A-2012. This is, however, not the case.

As shown on page 28 of Decision No. 249-C-A-2012 (para. 177), the Agency concluded with respect to WestJet’s Proposed Rule 15.1 that:

First, the Agency has determined that the language of Proposed Tariff Rule 15.1 following the introduction reflects the burden placed on the carrier under Article 19 of the Convention and would be considered reasonable if filed with the Agency.

Second, the Agency has determined that the introduction of Proposed Tariff Rule 15.1 would be considered unreasonable if filed with the Agency, as it leaves the impression that WestJet is never responsible for acts of nature or third parties.

WestJet’s Rule 70(A) in its present form has not been the subject of adjudication before the Agency. As the Agency noted in *Lukács v. WestJet*, Decision No. 227-C-A-2013 (at para. 45), “WestJet has been irresponsible in failing to ensure that consequential tariff revisions were not promptly made in relation to the revisions filed respecting that Decision.”

However, the omissions of WestJet do not justify including the same problematic tariff provisions in Porter Airlines’ International Tariff.

(iv) Conclusions

Proposed Rule 15(c) is at the very least unclear, or it is unreasonable.

The “all reasonable measures” test set out in Proposed Rule 15(c) does not relieve Porter Airlines from the obligation to refund or reprotect passengers, regardless of the cause of the “Schedule Irregularity.”

The “all reasonable measures” test is relevant only to the obligation to refund the fares and charges for segments flown that no longer serve any purpose for the passenger’s travel.

Thus, the scope of Proposed Rule 15(c) ought to be confined to the second portion of Proposed Rule 15(a)(iii).

Specifically, the Applicant asks the Agency to direct Porter Airlines to revise Proposed Rule 15(a) by deleting 15(a)(iv) and 15(a)(v), and amending 15(a)(iii) to read as follows:

a refund of the fare and charges paid by the passenger for each unused segment, and, subject to Rule 15(c), for segments already flown if they no longer serve the purpose for which the passenger undertook such travel.

The Applicant is also asking the Agency to direct Porter Airlines to revise Proposed Rule 15(c) to read as follows:

If the Carrier demonstrates that

- (1) the Schedule Irregularity occurred for reasons beyond its control, and
- (2) it took all reasonable measures to avoid the Schedule Irregularity or that it was impossible for the Carrier to take such measures,

then the Carrier shall not be required to refund passengers for segments already flown, regardless of whether they serve the purpose for which the passenger undertook such travel.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

Cc: Mr. Greg Sheahan, Counsel, Porter Airlines

LIST OF AUTHORITIES

Legislation

1. *Air Transportation Regulations*, S.O.R./88-58.
2. *Canada Transportation Act*, S.C. 1996, c. 10.
3. *Canadian Transportation Agency General Rules*, S.O.R./2005-35.
4. *Carriage by Air Act*, R.S.C. 1985, c. C-26.

International instruments

5. *Montreal Convention: Convention for the Unification of Certain Rules for International Carriage by Air* (Montreal, 28 May 1999).

Case law

6. *Lukács v. Air Canada*, Canadian Transportation Agency, 204-C-A-2013.
7. *Lukács v. Porter Airlines*, Canadian Transportation Agency, 16-C-A-2013.
8. *Lukács v. Porter Airlines*, Canadian Transportation Agency, 344-C-A-2013.
9. *Lukács v. United Airlines*, 2009 MBQB 29.
10. *Lukács v. WestJet*, Canadian Transportation Agency, LET-C-A-83-2011.
11. *Lukács v. WestJet*, Canadian Transportation Agency, 249-C-A-2012.
12. *Lukács v. WestJet*, Canadian Transportation Agency, 252-C-A-2012.
13. *Lukács v. WestJet*, Canadian Transportation Agency, 227-C-A-2013.
14. *Re: Air Transat*, Canadian Transportation Agency, LET-A-112-2003.
15. *Re: Air Transat*, Canadian Transportation Agency, 28-A-2004.

PORTER AIRLINES INC.

GENERAL CONDITIONS OF CARRIAGE

REVIEW ITINERARY UPON RECEIPT

Please review this travel itinerary provided by Porter. You should contact Porter within 24 hours of receipt of this itinerary should you have any questions.

PORTER CONTACT INFORMATION

For flight arrival/departure information or to make changes to your reservation, please call (416) 619-8622 or (888) 619-8622, or visit our website at www.flyporter.com

The terms and conditions under which Porter offers transportation entirely within Canada are set out in Porter's published Domestic Tariff, and terms and conditions for transportation between Canada and United States are set out in Porter's International Tariff. Some of these conditions are set out in your itinerary and in the conditions printed below.

CONDITIONS

1. **Required Identification:** To board a flight, all domestic passengers are required to present one piece of valid government-issued photo ID that shows name, date of birth and gender, such as a driver's license or a passport. Passengers may also present two pieces of valid government-issued non-photo ID, at least one of which shows name, date of birth and gender, such as a birth certificate.

All passengers travelling to and from the United States are required to present a valid passport. Citizens of countries other than Canada and the United States should contact their consulate or embassy for boarding requirements. Proof of onward or return travel may be required at check-in.

2. **Check-In Deadline:** You must obtain your boarding pass and check in any baggage by the check-in deadline shown below.

Additionally, you must be available for boarding at the boarding gate by the deadline shown below. Failure to meet this deadline may result in the loss of your assigned seat or the cancellation of your reservation

Domestic:

	Toronto City Airport	Other Airports
Recommended Arrival Time	30 min	60 min
Check-In Closes	20 min	30 min
Boarding Time	15 min	20 min

International:

	Toronto City Airport	Other Airports
Recommended Arrival Time	60 min	90 min
Check-In Closes	45 min	60 min
Boarding Time	15 min	20 min

All times prior to scheduled departure time.

3. Reconfirmation of flights is not required, but you may confirm your flight times by visiting www.flyporter.com and selecting flight status on the main page or by calling Porter prior to your departure.
4. Advance seat assignments are not guaranteed and may change without notice. If your pre-assigned seat is unavailable, we will try to accommodate you in a comparable seat and will refund any applicable fees.
5. Tickets are non-transferable and name changes are not permitted.
6. Voluntary changes to your itinerary may require the payment of additional fees and fare upgrades. If you are travelling on a non-refundable ticket, Porter will be unable to make exceptions in the event of an unexpected trip cancellation or medical emergency. We recommend the purchase of travel insurance.
7. For travel within Canada, passengers may travel with one piece of checked baggage free of charge. A second piece of checked baggage costs \$20 CAD/USD, plus applicable taxes. Any checked item after two bags costs \$100 CAD/USD, plus applicable taxes, per item.

For travel to/from the US, a first piece of baggage costs \$25 CAD/USD, plus applicable taxes. A second piece of checked baggage costs \$35 CAD/USD, plus applicable taxes. Any checked item after two bags costs \$100 CAD/USD, plus applicable taxes, per item.

Items listed above are permitted up to 23 kg (50 lb) each. Each bag weighing between 23 kg (50 lb) and 32 kg (70 lb) is charged a fee of \$75 CAD/USD, plus applicable taxes, per direction. No single piece can weigh more than 32 kg (70 lb).

Any single piece measuring more than 158 cm (62 in) total dimension (the sum of the length, width and height) is charged \$75 CAD/USD per direction.

If a bag is both overweight and oversized, the \$75 fee is charged only once.

No overweight or oversized charge is applied for 3rd and subsequent bags.

You may also carry onboard one standard article with maximum dimensions of 23 x 40 x 55cm (9 x 16 x 22in) and one business article with maximum

dimensions 16 x 33 x 43cm (6 x 13 x 17in) each weighing no more than 9kg (20lbs). It is recommended that documents and medication be packed in your carry-on baggage, as Porter will not be responsible for their loss, damage or delay. For additional information, please refer to Baggage Information section.

8. Pet travel is restricted to house cats and small dogs that can comfortably manoeuvre inside an approved carrier during flight. For operational and comfort reasons, Porter limits the number of pet carriers allowed in the cabin to two at any one time. No pets are allowed in the cargo hold.

Please contact the Call Centre to confirm reservation availability for your pet on your desired flight prior to booking your own ticket.

Seasonal Baggage Restrictions: See website for applicable dates

- Additional baggage restrictions may apply on all flights.
- In periods of anticipated high baggage volume, excess baggage will be charged the applicable fees and bags will be placed "on hold" pending space on the aircraft.
- If the excess baggage does not arrive on the same flight as the passenger, it will be placed on the next available flight. It will be the passenger's responsibility to return to the airport for baggage pick up.

For safety reasons, dangerous articles must not be packed in checked or carry-on baggage. The carrier will not accept fragile, valuable or perishable articles including money, jewelry, cameras, video and electronic equipment, silverware, negotiable instruments, business documents, samples, medications, paintings, antiques, furs, manuscripts or similar items in checked baggage or when otherwise placed in the care of the carrier.

NOTICE - SOLD SUBJECT TO TARIFF REGULATIONS

Carrier reserves the right to refuse carriage of any persons or of any goods or baggage, in accordance with the applicable provisions of carrier's tariffs, rules or regulations, or otherwise in accordance with the law. You may be required to present the credit card used to purchase your ticket at check-in.

OVERBOOKING NOTICE

Airline flights may be overbooked, and there is a slight chance that a seat will not be available on a flight for which a person has a confirmed reservation. If the flight is overbooked, no one will be denied a seat until airline personnel first ask for volunteers willing to give up their reservation in exchange for a payment of the airline's choosing. If there are not enough volunteers, the airline will deny boarding to other persons in accordance with its particular boarding priority. With few exceptions, persons denied boarding involuntarily are entitled to compensation.

NOTICE OF BAGGAGE LIABILITY LIMITATIONS

Liability for loss, delay or damage to baggage is limited unless a higher value is declared in advance and additional charges are paid. For travel wholly between points in Canada, the liability limit is \$1800 CAD per passenger. For further information, please consult Porter's domestic or transborder tariff.

Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under the Convention or such special contracts of carriage. For further information, please consult your airline or insurance company representative.

CONDITIONS OF CONTRACT

1. As used in this contract, "ticket" means this passenger document and baggage check, or this itinerary/receipt if applicable, in the case of an electronic ticket, of which these conditions and the notices form part, "carriage" is equivalent to "transportation", "carrier" means all air carriers that carry or undertake to carry the passenger or his baggage hereunder or perform any other service incidental to such air carriage, "electronic ticket" means the itinerary/receipt issued by or on behalf of carrier, the electronic coupons and, if applicable, a boarding document.
2. Carriage hereunder is subject to the rules and limitations relating to liability set out in the carrier's tariff.
3. To the extent not in conflict with the foregoing, carriage and other services performed by the carrier are subject to: (i) provisions contained in this ticket, (ii) applicable tariffs, (iii) carrier's conditions of carriage and related regulations which are made part hereof (and are available on application at the offices of carrier).
4. Carrier's name may be abbreviated in the ticket, the full name and its abbreviation being set forth in carrier's tariffs, conditions of carriage, regulations or timetables; carrier's address shall be the airport of departure shown opposite the first abbreviation of carrier's name in the ticket; the agreed stopping places are those places set forth in this ticket or as shown in carrier's timetables as scheduled stopping places on the passenger's route; carriage to be performed hereunder by several successive carriers is regarded as a single operation.
5. Any exclusion or limitation of liability of carrier shall apply to and be for the benefit of agents, servants and representatives of carrier and any person whose aircraft is used by carrier for carriage and its agents, servants and representatives.
6. Checked baggage will be delivered to bearer of the baggage check. In case of damage to baggage, a complaint must be made in writing to carrier forthwith after discovery of damage and, at the latest, within 7 days from receipt; in case of delay, complaint must be made within 21 days from date the baggage was delivered. In all other cases, including loss, complaints must be made within 24 days from the date the passenger's transportation stopped.
7. This ticket is good for carriage for one year from date of issue, except as otherwise provided in this ticket, in carrier's tariffs, conditions of carriage, or

related regulations. The fare for carriage hereunder is subject to change prior to commencement of carriage. Carrier may refuse transportation if the applicable fare has not been paid. Provided the original booking is cancelled prior to two hours before the original flight departure, the value of the unused ticket, less applicable change fees, can be applied to a ticket for travel completed within 12 months from the date of original ticket issuance. Credit may be applied to base fare, airline surcharges, change fees, and government taxes and fees. Credit can be used one time only. Any residual value left from its use is forfeited. Bookings using credit must be in the name of the owner of the credit. Credit may be transferred to another traveler one time only, while maintaining original expiration date.

8. Carrier undertakes to use its best efforts to carry the passenger and baggage with reasonable dispatch. Times shown in timetables or elsewhere are not guaranteed and form no part of this contract. Carrier may without notice substitute alternate carriers or aircraft, and may alter or omit stopping places shown on the ticket in case of necessity. Schedules are subject to change without notice. Carrier assumes no responsibility for making connections.
9. Passengers shall comply with Government travel requirements, present exit, entry and other required documents and arrive at airport by time fixed by carrier or, if no time is fixed, early enough to complete departure procedures.
10. No agent, servant or representative of carrier has authority to alter, modify or waive any provision of this contract.

PORTER AIRLINES INC.

CTA (A) No. 1

4th Revised Page 30

DOMESTIC TARIFF

Cancels 3rd Revised Page 30

SECTION VI – REFUNDS

RULE 16 – RESPONSIBILITY FOR SCHEDULES AND OPERATIONS

- (a) The Carrier will endeavour to transport the passenger and baggage with reasonably dispatch, but times shown in timetables or elsewhere are not guaranteed and form no part of this contract.
- (b) The agreed stopping places are those places shown in the carrier's timetable as scheduled stopping places on the route. The Carrier may substitute alternative carriers or aircraft and, if necessary, may alter or omit stopping places shown in the timetable. The carrier will make reasonable efforts to inform passengers of any of the above changes, and to the extent possible, the reason for them.
- (c) Schedules are subject to change. Passengers have a right to information on flight times and schedule changes, and the Carrier will make reasonable efforts to inform passengers of flight delays, and schedule changes and, to the extent possible, the reasons for them. Carrier will also undertake to inform passengers of any advancement of departure times.
- (d) It is always recommended that the passenger communicate with the Carrier either by telephone, electronic device or via the Carrier's Web site or refer to airport terminal displays to ascertain the flight's status and departure time.

16.1 Passenger Expenses Resulting from Delays

- (a) Passengers will be entitled to reimbursement from the Carrier for reasonable expenses incurred as a result of a delay, subject to the following conditions:
 - i. The Carrier shall not be liable for any damages, costs, losses or expenses occasioned by delays if it, and its employees and agents, took all measures that could reasonably be required to avoid the damage or if it was impossible for the Carrier and its employees or agents to take such measures;
 - ii. Any passenger seeking reimbursement for expenses resulting from delays must provide the Carrier with (a) written notice of his or her claim, (b) particulars of the expenses for which reimbursement is sought and (c) receipts or other documents establishing to the reasonable satisfaction of the

For explanation of abbreviations, reference marks and symbols used but not explained hereon, see Page 4.

ISSUE DATE

EFFECTIVE DATE

October 15, 2013

October 15, 2013