**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Commission’s Investigation of the Disconnection Policies and Practices of Duke Energy Ohio, Inc.  | )))) | Case No. 17-2089-GE-COI |

**REPLY COMMENTS ON THE AUDIT REPORT OF DUKE’S PRACTICES AND POLICIES IN DISCONNECTING CONSUMERS’ UTILITY SERVICE**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

**AND**

**COMMUNITIES UNITED FOR ACTION**

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# INTRODUCTION

Ohio law and rules of the Public Utilities Commission of Ohio (“PUCO”) were adopted to protect the safety and well-being of Ohioans whose utility service is about to be disconnected. In this case, the PUCO is considering whether Duke Energy Ohio, Inc. (“Duke”) complies with Ohio law and PUCO rules and orders in disconnecting consumers’ gas and electric service.

The final audit report issued by NorthStar Consulting Group (“NorthStar”) on March 14, 2018[[1]](#footnote-1) discovered that Duke has engaged in unlawful disconnection practices and violations where Duke does not comply with the PUCO disconnection rules and orders.[[2]](#footnote-2) NorthStar also identified numerous Duke policies, practices, and procedures that should be improved in order to more fully protect customers from unlawful disconnections.

In response to a PUCO Entry,[[3]](#footnote-3) the Office of the Ohio Consumers’ Counsel (“OCC”) and Communities United for Action (“CUFA”) filed joint Comments on the audit report on April 27, 2018. Also filing separate comments were Duke, the PUCO Staff, the City of Cincinnati (“City”), and Ohio Partners for Affordable Energy (“OPAE”).

OCC and CUFA respectfully request that the PUCO adopt the auditor’s recommendations and more. The PUCO should assess the forfeitures and conduct the additional investigations recommended by OCC and CUFA in their Comments.

# REPLY COMMENTS

## The audit report’s findings show pervasive and continued disregard of the PUCO rules, policies, and law that should be followed to protect customers from unfair and unreasonable disconnections.

 Duke alleges that the audit report contains recommendations that go beyond a review of Duke’s compliance with Ohio law and PUCO rules. Or that because Duke has taken actions to address the rule violations, no further comments or actions are necessary. Duke further contends that many of NorthStar’s recommendations should be deferred to a generic rulemaking docket, where the additional costs to implement changes can also be considered.[[4]](#footnote-4) Duke would have the PUCO ignore many of the audit report’s recommendations.

Duke’s attempt to minimize the significance of NorthStar’s findings is merely an attempt to continue to ignore the PUCO’s rules, to further delay the implementation of the necessary changes that Duke should have already made in its disconnection policies and practices to protect consumers, or to avoid forfeitures for the rule violations. Further, the findings and recommendations made by the auditor are specific to Duke, and thus a rulemaking proceeding that would be applicable to all gas and electric utilities is unnecessary.

Many of Duke’s disconnection policies and practices do not comply with consumer protection laws and rules that have been in effect for many years. Duke offered no justification or rationale for its non-compliance. Duke also failed to provide information to demonstrate that the alleged cost of complying with NorthStar’s consumer protection recommendations would exceed what Duke is already collecting from customers in base rates to follow existing consumer protection laws and rules.

The PUCO has a duty to protect consumers by enforcing Ohio law, PUCO rules, and PUCO orders. The auditor reviewed Duke’s compliance with three sets of PUCO rules: Ohio Adm. Code 4901:1-10 (Electric Companies); Ohio Adm. Code 4901:1-13 (Gas Companies); and 4901:1-18 (Termination of Residential Service).[[5]](#footnote-5) These PUCO rules are the *minimum performance standards* that are implemented across all gas and electric utilities in the state.[[6]](#footnote-6) The General Assembly has assigned the PUCO the role of providing general supervisory responsibilities over public utilities for the specific purposes of protecting the safety and security of the public, and ensuring compliance with all laws and PUCO orders.[[7]](#footnote-7) And the General Assembly has authorized the PUCO to assess forfeitures against utilities that fail to follow the law, rules, and orders.[[8]](#footnote-8) Duke has failed to meet the minimum performance standards and the PUCO must now enforce its own rules and assess forfeitures for Duke’s non-compliance.

Duke claims there were no compliance issues identified by the auditor in several sections of the audit report. But Duke is not accurately representing the content of the report. The auditor used the term “partial” in summarizing its assessment of Duke’s compliance with Ohio law and PUCO rules.[[9]](#footnote-9) Because the PUCO’s rules are a minimum performance standard, the designation of “partial” compliance by the auditor means that Duke was not complying with several of the PUCO’s rules. There is no partial compliance under the rules. Rather, Duke violated various laws and PUCO rules and orders.

The following table shows that Duke is in violation of at least ten laws, rules, or PUCO orders. Nine of the non-compliance issues were identified by the auditor. An additional issue involving Duke’s non-compliance with R.C. 4933.123 was raised by OCC and CUFA in their initial Comments.

**Duke Non-Compliance with Ohio law, PUCO Rules, and PUCO Orders**

| **Law/Rule/Order** | **Finding** | **Customer Impact** |
| --- | --- | --- |
| R.C. 4933.12 | Non-Compliance | No notification to customers regarding the availability of weatherization programs to help lower gas bills. |
| R.C. 4933.121 | Non-Compliance | No notification to customers regarding the availability of weatherization programs to help lower electric bills. |
| R.C. 4933.123 | Non-Compliance | The inaccurate or incomplete data being reported by Duke can negatively impact the policy review and reporting of statewide disconnection data.  |
| Ohio Adm. Code 4901:1-18-05 | Non-Compliance | Customers were not offered all payment options that are available to avoid shutoff of gas and/or electric service. |
| Ohio Adm. Code 4901:1-18-09 | Non-Compliance | Duke did not allow customers to decide whether they wish to retain either their gas or their electric service.  |
| Ohio Adm. Code 4901:1-18-06(A)(1)-(4) | Non-Compliance | Duke did not follow disconnection procedures, including notice requirements, in 27.5% of customers reviewed by the auditor.  |
| Ohio Adm. Code 4901:1-18-06(A)(5) | Non-Compliance | Customers’ utility service shut off without sufficient notice year round. |
| Ohio Adm. Code 4901:1-18-06(B) | Non-Compliance | Customers did not receive proper notice before utility service is shut off during the winter months. |
| Ohio Adm. Code 4901:1-18-08 | Non-Compliance | Landlord-tenant was not sufficiently notified prior to shut-off. |
| Duke Waiver of Ohio Adm. Code 4901:1-18-06(A)(2); Case No. 16-1096-EL-WVR  | Non-Compliance | Ten percent of customers reviewed by the auditor did not receive a text message or phone call before being remotely shutoff as required by terms of the PUCO’s waiver approval. |

Notably, in the *Pitzer* case, which was the genesis of this proceeding, the PUCO determined that Duke violated Ohio Adm. Code 4901:1-18-06(B) in November 2011.[[10]](#footnote-10) The audit in this proceeding also discovered that Duke did not comply with same rule in 2017. And the audit in this case showed that Duke did not comply with Ohio Adm. Code 4901:1-18-09 in 2017. OCC witness James D. Williams pointed out that Duke did not comply with this same rule in November 2011.[[11]](#footnote-11) Further investigation is needed to find out how many customers were harmed by Duke’s non-compliance with these two rules, and the others listed in the table above, during the past six years.

Following the tragic consequences in the *Pitzer* case, there is no assurance even now that Duke is providing customers the notices that are required during the winter heating season. The auditor requested a list of customer accounts that had a potential disconnection date in October 2017 and that were subsequently disconnected after October 31, 2018.[[12]](#footnote-12) Duke failed to respond with a list and instead alleged that there is no meaningful distinction with the winter heating season because of the timing for the 14- day notice and the final ten-day notice. Duke further claims that these notice requirements were modified pursuant to a waiver (presumably meaning the personal notice on the day of disconnection waiver). OCC is unaware of any waiver that was authorized by the PUCO regarding notices during the winter heating season.[[13]](#footnote-13)

Furthermore, OCC attempted to obtain similar information over a longer period of time regarding the number of disconnections occurring just before and after November 1st of each year and the timing for the arrearages to determine if consumers were receiving proper notice and if Duke is complying with the PUCO rules.[[14]](#footnote-14) Duke claimed that the requested information is not tracked.[[15]](#footnote-15) Duke’s failure to provide specific information about disconnections occurring during the winter heating season inhibits the ability of the PUCO, the auditor, and parties to determine if Duke is complying with the PUCO’s rules.

Duke claims that a recent PUCO Staff audit of Duke’s communications with customers related to rights and responsibilities found that Duke was in compliance with the PUCO’s rules.[[16]](#footnote-16) However, the PUCO Staff’s comments contradict this statement. The PUCO Staff recommends that Duke modify its website to prominently post the customer rights and responsibilities summary.[[17]](#footnote-17) Ohio Adm. Code 4901:1-10-12 requires the written summary to be prominently posted on the utility website. Based on the PUCO Staff’s comments, Duke is not prominently posting the required customer information on its website which is a violation of Ohio Adm. Code 4901:1-10-12.

Duke claims that the auditor found no violations related to the offering of extended payment plans.[[18]](#footnote-18) But this is simply not true. The auditor reviewed a sample of 15 payment arrangement calls from November 6, 2017 (during the winter heating season) and found that only one customer was offered all of the required PUCO payment options.[[19]](#footnote-19) None of the callers were offered PIPP or a negotiated payment plan.[[20]](#footnote-20) Customers were not consistently offered assistance upon mentioning financial difficulty.[[21]](#footnote-21) This is also a violation of Ohio Adm. Code 4901:1-18-05(B) and the winter reconnection order in Case No.17-1829-GE-UNC. The PUCO Staff’s comments recommended that Duke offer all extended payment plans and not just the one-sixth payment plan.[[22]](#footnote-22) But the PUCO should do more. The PUCO should assess forfeitures against Duke for violating these consumer protection laws.

While Duke fails to offer customers all the payment plans that are required by the PUCO’s rules, Duke has placed unreasonable limitations on payment arrangements for consumers. According to the audit report, Duke limits customers to one agreement in a 12-month period.[[23]](#footnote-23) The PUCO’s rules do not limit the availability of payment agreements to one per year. There can be many circumstances in the lives of customers where different payment plans are needed over the course of a year. Duke should be encouraging payment arrangements intended to avoid disconnection, instead of creating obstacles to consumers maintaining their utility service.

The auditor found numerous issues with Duke’s disconnection notices that are violations of Ohio Adm. Code 4901:1-18-06. For example, the disconnect notice is not prominently identified on the bill even though this is required if the bill contains a 14-day notice.[[24]](#footnote-24) The PUCO Staff recommended that the 14-day notice be modified to include font size, graphics, colors, payment coupon, separate amounts for combination customers, and an explanation of the consequences of default on a payment plan.[[25]](#footnote-25) The PUCO Staff’s comments demonstrate that Duke’s disconnection notice is not prominently displaying the content required by Ohio Adm. Code 4901:1-18-06(A)(5).

Further, Duke’s disconnection notices fail to provide customers with required information. The customer is not provided with the amount to be paid to avoid disconnection, but is only referred to the last bill.[[26]](#footnote-26) NorthStar noted that the amount due cited on the day-of-disconnection call may be in excess of the minimum amount needed to avoid disconnection. The audit report recommended that the amount needed to avoid disconnection be given in the ten-day, two-day, and day-of-disconnection notices so that customers do not have to try to locate a previous bill and attempt to figure it out on their own.[[27]](#footnote-27)

The bill insert that is used as a disconnection notice during the winter months does not include information about the winter reconnection order or the availability of the winter heating season payment plan.[[28]](#footnote-28) The PUCO Staff also commented that the disconnection notices for the winter months should be clarified to remind customers about the winter reconnection order as required in the PUCO’s Finding and Order in Case No. 17-1829-GE-UNC.[[29]](#footnote-29) While OCC and CUFA agree with the PUCO Staff’s recommendations because they address Duke’s practices going forward, the PUCO Staff’s comments do not address the many rule violations that were found by the audit. The PUCO Staff’s comments also do not calculate the appropriate forfeiture that should be assessed to Duke for Duke’s many rule violations.

## **OCC and CUFA support the recommendations made by the City of Cincinnati to require Duke once again to give in-person notice to customers on the day of disconnection.**

### 1. The pilot program allowing remote disconnection of customers in lieu of in person notice should end because it does not provide adequate notice to customers that service is to be disconnected.

The City recognized that NorthStar not only identified several areas for improvement, but it “also discovered that Duke had been engaging in potentially unlawful disconnection practices and violations.”[[30]](#footnote-30) The City commented that Duke’s remote disconnection procedures and automated customer notification processes fail to ensure that customers receive notice on the day of disconnection.[[31]](#footnote-31) The City recommended that the PUCO end Duke’s pilot program and rescind the waiver of the in-person disconnection requirement so that Duke provides in-person notifications on the day of disconnection.[[32]](#footnote-32)

OCC and CUFA agree with the City’s recommendation. As the City correctly points out, Duke’s reliance on automated text and phone messages, to the exclusion of in-person or physical notice, fails to provide the intended notice to customers facing imminent disconnection. The City notes that text messages and/or automated phone calls “are not a dependable means or reaching customers, especially low-income and vulnerable and elderly populations, with the urgent message that disconnection of electric service is imminent.”[[33]](#footnote-33) On the other hand, the City notes, in-person notification “assures that customers are afforded uncomplicated and reliable methods for submitting payment to thwart the potentially disastrous effects of utility disconnection.”[[34]](#footnote-34)

The City went on to note that although reliance on technology “might produce savings for Duke, corporate profits cannot justify the potential harm to customers.”[[35]](#footnote-35) And, as the City noted, text messages are often used to defraud consumers,[[36]](#footnote-36) “there is empirical evidence to show that Duke’s reliance on automated text message and/or phone call notification presents an unacceptable risk to customers by failing to provide a safe or reliable method of payment.”[[37]](#footnote-37)

OCC and CUFA concur with the City’s views. The PUCO should follow the City’s recommendation and require Duke to provide all residential customers in-person notice on the day their utility service is to be disconnected.

### 2. Duke should not be disconnecting customers' service when customers owe $100 for both electric and gas services provided to them by a combination gas-electric utility like Duke.

The City also commented that Duke’s policy of disconnecting services for residential customers with a balance due of $100 is much too low a threshold for a combination gas-electric utility.[[38]](#footnote-38) This balance could easily accrue during a single month. OCC and CUFA agree and provided similar comments.[[39]](#footnote-39) The other gas utilities in the state have a minimum disconnection amount of at least $100. But that is just for gas service. A combination gas and electric utility should have a higher threshold, at least for combination gas and electric customers. Duke’s minimum disconnection amount should be an amount that reflects bills for providing both gas and electric service. OCC and CUFA support the City’s recommendation that the minimum delinquent amount necessary to trigger the disconnection process be increased.

### 3. Duke should do a better job informing customers about the availability of medical certifications and that the utility service of active duty military personnel will not be disconnected.

The audit report found that Duke customers who use a medical certification to avoid disconnection do not receive a special notice once the initial medical certification expires.[[40]](#footnote-40) Once a medical certification expires, the customer becomes immediately subject to disconnection without sending that customer the requisite 14-day notice.[[41]](#footnote-41) To remedy this problem, NorthStar recommended that Duke implement “text messages or phone calls to remind customers using medical certificates that the certificate is approaching expiration and arrangement must be made or their service will be disconnected.”[[42]](#footnote-42)

Because of the issues surrounding automated text messages and robocalls, the City asserts that NorthStar’s recommendation does not go far enough. The City urged the PUCO to require Duke to send customers whose medical certification has expired the required written notice under Ohio Adm. Code 4901:1-18-06.[[43]](#footnote-43) OCC and CUFA support the City’s recommendation. Because consumers who have medical issues are particularly vulnerable, they should be notified by mail. Text messages and robocalls are not reliable substitutes for notification by mail.

The City also commented that Duke does not adequately notify active duty military personnel that their utility service will not be disconnected for nonpayment if they are not at home because of military obligations.[[44]](#footnote-44) Ohio law prohibits the disconnection of gas or electric service to the home of military personnel who are deployed on active duty.[[45]](#footnote-45) The audit report pointed out that Duke does not have a process for identifying and flagging customers deployed on military active duty so that these customers could potentially be terminated for non-payment in violation of Ohio law.[[46]](#footnote-46) Although Duke suspends collection and a payment plan is set up once it is notified of an active duty servicemember’s absence due to military obligations, there is no information related to servicemembers on Duke’s website or on its bills.[[47]](#footnote-47) The service member must proactively contact Duke’s customer service center to find out any information.[[48]](#footnote-48)

The City noted that without a process to proactively identify and flag customers that are deployed on active military duty, “active servicemembers could be terminated for non-payment in violation of R.C. 4933.12(F) and 4933.121(E).”[[49]](#footnote-49) The City stated that “[s]uch an outcome is patently unlawful, unreasonable, and disrespectful to the men and women who bravely put their lives on the line in defense of this country.”[[50]](#footnote-50) OCC and CUFA agree.

OCC and CUFA join the City[[51]](#footnote-51) in supporting NorthStar’s recommendation that Duke must “develop marketing materials targeted to active duty military or include [the policy] on an existing bill insert.”[[52]](#footnote-52) OCC and CUFA further agree with the City that Duke should be ordered to demonstrate that it has corrected this deficiency in the disconnection notification procedures for active duty service members.[[53]](#footnote-53)

### 4. Cash kiosks would allow Duke customers a convenient way to pay their utility bills and avoid disconnection.

NorthStar recommended that Duke deploy cash kiosks to give customers more options for paying their bills.[[54]](#footnote-54) Although named “cash kiosks,” customers may use credit cards, debit cards, and personal checks – in addition to cash – to pay their electric bills without surcharges.[[55]](#footnote-55) NorthStar noted that the kiosks are a way for customers who do not have access to a computer or internet to pay their gas and electric bill.[[56]](#footnote-56) The kiosks may have extended hours and be available in secure locations such as grocery stores and public buildings.[[57]](#footnote-57) The City urges the PUCO to adopt this recommendation for Duke.[[58]](#footnote-58)

OCC and CUFA support this recommendation. Given that Duke has closed all the utility payment centers that once existed where customers could pay their bills in person, the kiosks may be a viable bill payment option for many customers. The PUCO should require Duke to investigate the feasibility and cost effectiveness of implementing kiosks as an additional alternative to the network of authorized agents that currently accept in-person customer payments.

# CONCLUSION

OCC and CUFA agreed in their Comments that NorthStar’s suggested changes to Duke’s disconnection policies and practices may help protect consumers from future harm. However, NorthStar’s suggestions do not address Duke’s noncompliance with Ohio law and PUCO rules. The disconnection laws and rules for utilities are vital consumer protections. The protections prevent utilities from abusive behavior toward customers who are vulnerable because their service is about to be disconnected.

The audit report’s findings of rule violations are more serious than Duke or the PUCO Staff characterize them in their initial comments. Duke minimizes the audit recommendations or would like to punt them to a rulemaking. The PUCO Staff’s recommendations address Duke’s practices going forward, but do not address the many rule violations that were found by the audit and the assessment of forfeitures for such rule violations.

The PUCO should assess forfeitures against Duke as recommended in the comments filed by OCC and CUFA. In addition, the PUCO should order Duke to bring its disconnection policies and practices into compliance with Ohio law and PUCO rules as OCC, CUFA, and the City recommend. The PUCO should conduct a follow-up audit within the next three years to verify that Duke implements the auditor’s and the PUCO’s directives and is in compliance with the PUCO’s rules, Ohio law, and PUCO orders in order to protect consumers from unlawful disconnection of their utility service.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Reply Comments was served on the persons stated below via electronic transmission this 1st day of June 2018.

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1. Compliance Audit and Review of the Disconnection Practices and Policies of Duke Energy Ohio, Inc., Final Report (March 14, 2018) (“Audit Report”). [↑](#footnote-ref-1)
2. Although, NorthStar often used the term “partial compliance” in describing Duke’s performance, compliance with rules that are meant to protect consumers from unlawfully losing their utility service is not typically and should not be measured in degrees. If Duke did not comply with the PUCO rules in their entirety, Duke is not in compliance with the rules and should be found to be in violation of the PUCO rules. [↑](#footnote-ref-2)
3. Entry (March 21, 2018). [↑](#footnote-ref-3)
4. Duke Comments at 2. [↑](#footnote-ref-4)
5. *See* Audit Report at I-1. [↑](#footnote-ref-5)
6. Ohio Adm. Code 4901:1-10-02(A)(2), Ohio Adm. Code 4901:1-13-02(A)(2), Ohio Adm. Code 4901:1-18-02(C). [↑](#footnote-ref-6)
7. R.C. 4905.06. [↑](#footnote-ref-7)
8. R.C. 4905.54. [↑](#footnote-ref-8)
9. *See* Audit Report at I-4 and I-5. [↑](#footnote-ref-9)
10. *Pitzer v. Duke Energy Ohio, Inc*., Case No. 15-298-GE-CSS, Opinion and Order (August 30, 2017), ¶58. [↑](#footnote-ref-10)
11. OCC/CUFA Comments at 8. [↑](#footnote-ref-11)
12. NORTHSTAR-DR-02-038. [↑](#footnote-ref-12)
13. *Id*. [↑](#footnote-ref-13)
14. OCC INT-1-002 and INT-1-003. [↑](#footnote-ref-14)
15. *Id*. [↑](#footnote-ref-15)
16. Duke Comments at 3. [↑](#footnote-ref-16)
17. PUCO Staff Comments at 2. [↑](#footnote-ref-17)
18. Duke Comments at 4. [↑](#footnote-ref-18)
19. Audit Report at III-34. [↑](#footnote-ref-19)
20. *Id*. [↑](#footnote-ref-20)
21. *Id*. [↑](#footnote-ref-21)
22. PUCO Staff Comments at 5. [↑](#footnote-ref-22)
23. Audit Report at III-32. Customers are eligible for one agreement in a 12-month period. If the agreement is paid in full they are eligible for another agreement. If the customer has defaulted on a payment agreement, they may still be eligible for the one-third Winter Heating Season Agreement. [↑](#footnote-ref-23)
24. Audit Report at III-16. [↑](#footnote-ref-24)
25. PUCO Staff Comments at 4. [↑](#footnote-ref-25)
26. *See* OPAE Comments at 5. [↑](#footnote-ref-26)
27. Audit Report at III-26 through III-30. [↑](#footnote-ref-27)
28. *Id*. [↑](#footnote-ref-28)
29. *Id.* at 3. [↑](#footnote-ref-29)
30. City of Cincinnati Comments at 1. [↑](#footnote-ref-30)
31. *Id.* at 2. [↑](#footnote-ref-31)
32. *Id.* at 6. [↑](#footnote-ref-32)
33. *Id.* at 3. [↑](#footnote-ref-33)
34. *Id.* at 4. [↑](#footnote-ref-34)
35. *Id.* [↑](#footnote-ref-35)
36. *Id.* at 5. [↑](#footnote-ref-36)
37. *Id.* at 6. [↑](#footnote-ref-37)
38. *Id.* [↑](#footnote-ref-38)
39. OCC/CUFA Comments at 18-19. [↑](#footnote-ref-39)
40. *See* Audit Report at III-13. [↑](#footnote-ref-40)
41. *Id*. [↑](#footnote-ref-41)
42. *Id.* at III-15. [↑](#footnote-ref-42)
43. City of Cincinnati Comments at 8. [↑](#footnote-ref-43)
44. *Id.* at 8-9. [↑](#footnote-ref-44)
45. R.C. 4933.12(F); R.C. 4933.121(E). [↑](#footnote-ref-45)
46. Audit Report at III-14. [↑](#footnote-ref-46)
47. *Id.* [↑](#footnote-ref-47)
48. *Id.* [↑](#footnote-ref-48)
49. City of Cincinnati Comments at 9. [↑](#footnote-ref-49)
50. *Id.* [↑](#footnote-ref-50)
51. *Id*. [↑](#footnote-ref-51)
52. Audit Report at III-15. [↑](#footnote-ref-52)
53. City of Cincinnati Comments at 9-10. [↑](#footnote-ref-53)
54. Audit Report at IV-1. [↑](#footnote-ref-54)
55. *Id.* [↑](#footnote-ref-55)
56. *Id.* [↑](#footnote-ref-56)
57. *Id.* [↑](#footnote-ref-57)
58. City of Cincinnati Comments at 10. [↑](#footnote-ref-58)