

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of	)	
Mary-Martha and Dennis Corrigan,	)	
	)	
Complainants,	)	
	)	Case No. 09-492-EL-CSS
v.	)	
	)	
The Cleveland Electric Illuminating Company,	)	
	)	
Respondent.	)	

**MOTION FOR STAY PENDING SUPREME COURT REVIEW**

**EXPEDITED RULING REQUESTED**

Now come Mary Martha and Dennis Corrigan, complainants, through counsel, and move for a stay pending review by the Ohio Supreme Court of the Commission's March 26, 2014, Order and May 14, 2014 Entry on Rehearing authorizing the utility to remove the complainants' tree, and further request for an expedited ruling in that the undersigned was informed by an attorney for the utility that the utility has scheduled the removal of the Corrigan's tree on May 19, 2014. A Memorandum in Support is of the within Motion for Stay and Request for Expedited Ruling is attached.

Respectfully submitted,

s/Lester S. Potash  
Lester S. Potash (#0011009)  
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### **Certificate of Service**

A true copy of the foregoing Motion for Stay and Request for Expedited Ruling has been served electronically this 14th day of May 2014 on the following counsel for Respondent, to wit, Carrie M. Dunn, Esq., at [cdunn@firstenergycorp.com](mailto:cdunn@firstenergycorp.com) and Lydia Floyd, Esq. at [lfloyd@jonesday.com](mailto:lfloyd@jonesday.com)

s/Lester S. Potash  
Lester S. Potash (#0011009)  
Counsel for Complainants

**Memorandum in Support of Motion for Stay Pending Supreme Court Review  
and Request for Expedited Ruling**

The matter before this Commission involves complainants Mary Martha and Denis Corrigan's challenge to the removal of their mature silver maple tree by The Cleveland Electric Illuminating Company ("utility"). This matter has its origins in 2004, wherein the Corrigan's initiated an action in the Cuyahoga County Common Pleas Court obtaining an injunction preventing the tree's removal. Appeals brought the matter to the Ohio Supreme Court which ruled that this issue was within the exclusive jurisdiction of the Public Utilities Commission of Ohio. *Corrigan v. Illum. Co.*, 122 Ohio St.3d, 2009-Ohio-2524. The Corrigan's tree remained in place throughout these proceedings.

Following the decision of the Ohio Supreme Court, the Corrigan's initiated the within action seeking the same relief as granted by the common pleas court and upheld on appeal by the court of appeals. During the proceedings before the Commission, the tree was to remain in place.

On March 26, 2014, the Commission issued its Opinion and Order which found as reasonable the utility's planned removal of the Corrigan's tree.

On March 27, 2014, the undersigned spoke with Harry Flannery, an attorney for the utility,<sup>1</sup> discussing the Commission's Opinion and Order. At that time, the undersigned advised Mr. Flannery of the Corrigan's intention of filing a Request for Rehearing and asked to have the previous stay can remain in place. Mr. Flannery indicated that he would inquire and respond.

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<sup>1</sup> Although Mr. Flannery is not an attorney of record in this matter, from the outset and throughout the court and administrative proceedings Mr. Flannery, on behalf of the utility, has regularly conferred with the undersigned and has been active in this matter including but not limited to visiting the Corrigan's property to view the tree and was present when the utility sought to have the property surveyed, meeting with the undersigned to discuss possible resolution, etc.

Thereafter Mr. Flannery called the undersigned to advise that the utility planned the immediate removal of the Corrigan's' tree and would not consent to a stay.

The undersigned, on behalf of the Corrigan's sought a stay which the Commission granted per its Entry of March 27, 2014.

The Corrigan's timely filed their Application for Rehearing and on May 14, 2014, said Application was denied. That afternoon, Harry Flannery called the undersigned to advise that the utility scheduled the removal of the Corrigan's' tree for May 19, 2014. The undersigned advised Mr. Flannery that a Notice of Appeal to the Ohio Supreme Court will be timely filed, again requesting the utility's consent to a stay pending further appeal. Mr. Flannery indicated that such consent would most likely not be granted, although he would make the request.

The failure to grant a stay pending appeal to the Ohio Supreme Court will result in irreparable harm to the Corrigan's.

The Corrigan's respectfully request that the Commission issue an Order staying the removal of the Corrigan's' tree pending timely appeal to the Supreme Court of Ohio, and for an expedited ruling given the utility's decision to remove the Corrigan's' tree in the next few days.

Respectfully submitted,

s/Lester S. Potash  
Lester S. Potash (#0011009)  
Counsel for Complainants

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 09-0492-EL-CSS**

Summary: Motion Motion for Stay Pending Supreme Court Review and Request for Expedited Ruling electronically filed by Mr. Lester S. Potash on behalf of Corrigan, Mary Martha