

State of Florida



ORIGINAL

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M COMMISSION CLERK

DATE: January 14, 2005
TO: Kay B. Flynn, Chief of Records, Division of the Commission Clerk & Administrative Services
FROM: Katherine Fleming, Attorney, Office of the General Counsel; William T. Rendell, Public Utilities Supervisor, Division of Economic Regulation
RE: Release of Irrevocable Letter of Credit of Indiantown Gas Company, Inc. - Docket No. 030954-GU

Pursuant to Order No. PSC-04-0180-PCO-GU, Indiantown Gas Company, Inc. (Indiantown or the Company), secured an irrevocable letter of credit to guarantee revenues collected under interim rates, subject to refund, pending final resolution of its request for a rate increase. The Order stated that the letter of credit shall remain in effect until a final Commission order is issued regarding the resolution of the Company's request for permanent rate relief. The Commission issued Order No. PSC-04-0565-PAA-GU on June 2, 2004 and the Consummating Order No. PSC-04-0627-CO-GU on June 24, 2004, in final resolution of Indiantown's request. Therefore, the irrevocable letter of credit may be released. Attached is a copy of the letter of credit.

The release should be addressed to: First Bank of Indiantown
Attention: Mr. Edward C. Appleton
P. O. Box 365
Indiantown, FL 34956

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FIRST BANK

Of Indiantown

IRREVOCABLE LETTER OF CREDIT

February 25, 2004

IRREVOCABLE LETTER OF CREDIT NUMBER: 165

BENEFICIARY: FLORIDA PUBLIC SERVICE COMMISSION ("Beneficiary")
2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850

ISSUED ON BEHALF OF: INDIANTOWN GAS COMPANY, INC
P.O. Box 8, Indiantown, FL 34956

First Bank of Indiantown (Lender) hereby establishes a Clean Irrevocable Letter of Credit in favor of Beneficiary for a sum not exceeding the aggregate amount of Sixty Eight Thousand Five Hundred Seven and 00/100s Dollars (\$68,507.00). These funds shall be made available by Beneficiary's drafts drawn at sight on Lender at its address indicated below (or such other address that Lender may provide Beneficiary with written notice of in the future) and accompanied by the signed written statements or documents indicated below.

WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT THE PARTY IN WHOSE FAVOR THIS LETTER OF CREDIT IS BEING ISSUED TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.

DRAFT TERMS AND CONDITIONS:

Lender shall honor the drafts submitted by the beneficiary under the following terms and conditions: No additional terms or conditions are required than as stated elsewhere in this Letter of Credit.

Upon Lender's honor of such drafts and payment to the Beneficiary, lender, once the full amount of credit available under this Letter of Credit has been drawn, shall be fully discharged of its obligations under this Letter of Credit and shall not thereafter be obligated to make any further payments under this Letter of Credit in respect of such demand for payments to Beneficiary or any other person.

Beneficiary shall have no recourse against the Lender for any amount paid under this Letter of Credit after Lender honors any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by any party or under the name of any party purporting to act for Beneficiary, purporting to claim through the Beneficiary, or posing as Beneficiary. By presenting upon Lender or confirmer, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender and Confirmer any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

USE RESTRICTIONS

All drafts must be marked "DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NUMBER 165 DATED FEBRUARY 25, 2004." Only Beneficiary may complete a draft and accompanying statements or documents required by this Letter of Credit and make draws under this Letter of Credit.

This Letter of Credit must accompany draft and the amount of said draft shall be marked on the draft.

ASSIGNMENT OR TRANSFER

The right to draw under this Letter of Credit shall not be transferable except for a transfer by direct operation of law to the original beneficiary's administrator, executor, bankruptcy trustee, receiver, liquidator, successor, or other representatives at law; and, the first immediate transfer by such legal representative to a third party after express approval of a governmental body (judicial, administrative or executive).

First Bank of Indiantown

Courier Delivery: 15588 S.W. Warfield Boulevard, Indiantown, Florida

Mail Delivery: P.O. Box 365, Indiantown, Florida 34956

Phone: (772) 597-2181 • Fax: (772) 597-4159

TRANSFEEE'S REQUIRED DOCUMENTS

When the presenter is a legal representative under the above paragraph or a third party under the above paragraph the documents required for a draw shall include:

All documents required elsewhere in this Letter of Credit, except that such documents may be in the name of either the original beneficiary or the presenter permitted in the above paragraph and

A certified copy of the one or more documents which show the presenter's authority to claim through or act with authority for the original beneficiary.

TIMING OF DISHONOR

To the extent not prohibited by law, Lender shall be entitled to honor or dishonor any draw submitted in connection with this Letter of Credit within five (5) banking days. Although Lender shall be entitled to honor or dishonor a draw beyond the expiry date of this Letter of Credit, Beneficiary shall not be entitled to submit a draw request or provide Lender with any documents in support of a draw after the expiry date hereof.

MODIFICATION

The modification or waiver of any of Lender's or Beneficiary's obligations or rights under this Letter of Credit must be contained in a writing signed by Lender. A waiver on one occasion does not constitute a waiver on any other occasion.

COMPLIANCE BURDEN

Under no circumstances shall Lender be held responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of the Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary; and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

NON-SEVERABILITY

If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void and both Lender and Beneficiary shall be restored to a position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within the Letter's body.

CHOICE OF LAW/JURISDICTION

This Letter of Credit shall be governed by the laws of the State of Florida to the extent not governed by the International Chamber of Commerce Uniform Customs and Practice for Documentary credits (1998) revision, ICC Publication Number 500, and to the extent such laws are not inconsistent with the terms of this Letter of Credit. Lender and Beneficiary consent to the jurisdiction and venue of any court located in Florida in the event of any legal proceeding under this Letter of Credit.

EXPIRY

Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Lender on or before December 31, 2004.

It is understood that the beneficiary will no longer require this Letter of Credit once the final Florida Public Service Commission rate order is issued which is anticipated to be on or about May 4, 2004. Beneficiary should cancel and return this original Letter of Credit when it is no longer required if that is prior to the expiration date of December 31, 2004.

Dated February 25, 2004

LENDER: FIRST BANK OF INDIANTOWN

BY:



Edward C. Appleton, President and CEO