

**OKLAHOMA GAS AND ELECTRIC COMPANY
COAL SUPPLY
REQUEST FOR PROPOSAL**

1. DISCLAIMER

Prospective bidders are advised that the information contained in this Request for Proposal (“RFP”) has been prepared by Oklahoma Gas and Electric Company (“OG&E”) solely to assist prospective respondents in deciding whether to submit a bid. OG&E does not purport this information to be all-inclusive or to contain all of the information that a prospective respondent may need to consider in order to submit a bid. Neither OG&E, its employees or officers will be deemed to have made any current or future representation, promise or warranty, express or implied, as to the accuracy, reliability, or completeness of the information contained herein, or in any document or information made available to respondent, whether or not the aforementioned parties know or should have known of any errors or omissions, or were responsible for its inclusion in, or omission from, this document.

OG&E reserves the right to modify or supplement this RFP. No part of this RFP and no part of any subsequent correspondence by OG&E, its employees or officers shall be taken as providing legal, financial, or other advice; nor shall this RFP or any subsequent correspondence by OG&E related to this RFP be considered as establishing a contract or contractual obligation. A contractual obligation would arise only if and when definitive agreements have been approved and executed by the appropriate parties having authority to enter into and approve such agreements.

OG&E may, in its discretion and without limitation, refuse to accept any and all bids. OG&E reserves the right to evaluate bids and proceed in the manner it deems appropriate including, but not limited to, any deviations from its anticipated evaluation process, the waiver of any requirements, and requests for additional information. No respondent shall have any claim whatsoever against OG&E, its employees, or officers as a result of rejection by OG&E of any bid submitted.

2. DESCRIPTION OF SOLICITATION

2.1 Introduction.

The regulated Power Supply division of OG&E is hereby requesting coal supply bids (Power River Basin Coal) for its coal-fired generating plants for the period January 2011 through December 2015. All bids should allow for acceptance of all or a portion of the proposed tonnage. The evaluation and acceptance or rejection of any/or all bids will be at OG&E’s discretion.

2.2 RFP Schedule and Correspondence.

All information relevant to the RFP, including the relevant competitive bidding Rules of Subchapter 34 of the Oklahoma Corporation Commission (“OCC Rules”), will be available on the OG&E website (oge.com). Information will be made simultaneously and publicly available to all interested and/or registered parties. Questions regarding this RFP

must be submitted via e-mail to the address listed in 2.2.2. All questions and answers will be posted on the OG&E website.

Registration is not required to submit bids; however, registration is required if any bidder wishes to be notified of any updates, revisions, and questions which may arise. Registration is accomplished by submitting contact information to the e-mail address listed in 2.2.2. Registered persons will be notified of posted information via their submitted e-mail address.

2.2.1 RFP Dates.

RFP Released Date: August 11, 2009.

Technical Conference: August 24, 2009, @ 2:00 P.M. CST, via teleconference (405) 553-2066 Passcode 992066.

RFP Submittal Deadline: Bids must be received by OG&E on or before September 14, 2009 @ 5:00 P.M. CST.

Bid Term: A bid(s) will remain in effect for 30 days from the RFP submittal deadline, unless the bidder specifies otherwise, and acceptance of a successful bid(s) will be contingent on the negotiation and execution of an agreement acceptable to OG&E.

Notification of Successful Bid(s): By 5:00 P.M. CST on October 23, 2009.

First Coal Purchases under RFP: January 1, 2011

2.2.2 Correspondence and RFP Questions.

All correspondence, questions, or other pertinent information concerning the RFP should be transmitted via e-mail the following address: 2009CoalRFP@oge.com.

Questions concerning the RFP submitted to OG&E from prospective bidders and responses to those questions may be viewed at the following link: <http://www.oge.com/about/DoingBusinessWithOGE/RFPs/Pages/2009CoalRFP.aspx>.

2.2.3 OG&E Contact Person for the RFP.

Jill Malone
(405) 553-2279

3. BID TERMS AND CONDITIONS.

3.1 Threshold Requirements.

In order for a bid to be considered and evaluated by OG&E the bid must be received before the response deadline, adhere to the response format, and must contain all information requested in the RFP. Any nonconforming bid will be rejected.

3.2 Term.

OG&E is interested in a term of up to five (5) years beginning January 1, 2011 and ending December 31, 2015.

3.3 Quantity.

OG&E is requesting up to 3,000,000 tons of Powder River Basin Coal, from a single or multiple bidders, for each calendar year.

3.4 Pricing.

Price should be quoted in US dollars per ton f.o.b. railcar at the proposed loading facility as a fixed price for each year. The base price will be adjusted according to the contract between OG&E and the successful bidder(s).

3.5 Transportation.

Coal delivered to OG&E's coal-fired generating plants will be by rail. OG&E expects shipment size to be unit trains of 135-150 cars. Unit train shipments will be planned by OG&E's Coal/Rail Manager and transportation coordinators representing the Seller and the Railroads. Seller will be required to operate its loading facilities twenty-four (24) hours per day, 365 days per year, and complete the loading of each unit train within four (4) hours.

Seller is required, at the point of delivery, to have a mechanical sampling system of "cutting the full coal stream" type or other system acceptable to OG&E in order to have Seller's proposal considered. Samples taken by Seller at the point of delivery will be analyzed, and will govern for payment and quality administration purposes. Please include with your proposal additional information about your ability to meet the sampling requirements of this RFP.

Seller is required, at the point of delivery, to have certified scales that conform to the Association of American Railroads "Scale Handbook". Seller's scales will be used to determine the weight of coal sold, subject to the approval of OG&E. Please include information about your weighting system with your proposal. In the absence of acceptable scale weights from Seller, the weight of coal sold and delivered shall be determined by railroad scales.

3.6 Flexibility.

Flexibility in scheduled shipments will be identified in section three of the "Coal Sales Proposal Form".

3.7 Quality.

Coal Specifications

Btu/lb	8,350	Minimum
Total Moisture	32.0%	Maximum
Total Ash	8.0%	Maximum
Total Lbs. Sulfur / MMBtu	1.2	Maximum
Size	3" x 0	
Grindability	45	Minimum
Ash Fusion Temperature (H=W Reducing Atmosphere)	2,000	Minimum
Volatile Matter	27.5%	Minimum

3.8 Quality Analysis and Samples.

All bidders are required to return their most recent quality analyses (taken and analyzed within six months of bid opening date) of the coal offered to OG&E. The analyses must include the hardgrove grindability index, a short proximate analysis (including Btu, sulfur, and four point reducing atmosphere ash fusion temperature), an ash mineral analysis, an ultimate analysis, and a trace element analysis (including percentages of arsenic, barium, beryllium, chlorine, chromium, cobalt, copper, fluorine, lead, mercury, nickel, manganese, and vanadium). Please include your analyses with your bid.

OG&E may also require that the acceptance of a bidder's offer will be conditioned based upon a successful test burn of bidder's coal. Such test burn will be scheduled at a mutually agreed time. OG&E's determination of whether the test burn was successful or unsuccessful shall be final and binding upon bidder. If OG&E deems the test burn to be unsuccessful, OG&E may cancel the contract.

3.9 Sulfur.

OG&E may accept average sulfur up to 0.65 Lbs. SO₂/MMBtu; however, appropriate economic consideration must be given for sulfur. Bidder must specify and guarantee the monthly average sulfur content in addition to the range of expected quality in order for OG&E's evaluation process to accurately determine cost involved in the use of such coal.

3.10 NO_x.

Bidders will be required to supply the percent nitrogen (MAF basis), fixed carbon, and volatile matter for the proposed coal supply. This data will be used to evaluate potential NO_x emissions associated with your coal, and could be used as one of the criteria in the final selection process.

3.11 Misrepresentation of Quality.

There are serious economic and operational costs associated with the receipt of off-specification coals. Because of this fact, OG&E urges bidders to represent their coal as it will typically be received. A supplier who consistently provides coal which is outside the guaranteed specification range will be removed from OG&E's bid list indefinitely.

3.12 Coal Supply Agreement.

Successful bidder(s) must have an existing Coal Supply Agreement with OG&E, or be willing to enter into Coal Supply Agreement with OG&E. All coal purchases by OG&E will be governed by the Coal Supply Agreement. Please review the draft of OG&E's proposed Coal Supply Agreement, attached herein as, Exhibit A.

3.13 Creditworthiness.

Each prospective bidder is required to submit a completed Credit Application Form, Exhibit B to the RFP. OG&E, at its discretion and without limitation, will (1) ascertain each bidder's creditworthiness during the evaluation process, and (2) ascertain the successful bidder's creditworthiness prior to the execution of any and all agreements and thereafter. OG&E may, at its discretion and without limitation, require the successful bidder to provide letters of credit.

4. RFP RESPONSE FORMAT AND CONTENT.

- 4.1 All bids submitted must be in the bid form, as shown on Exhibit C to the RFP.
- 4.2 Full entity name of company providing bid. Phone number, mailing address, and e-mail address of contact person within company responsible for bid.
- 4.3 All bids must be specific as to terms and conditions.
- 4.4 All bids will be sealed and received via U.S. mail through 5:00 P.M. CST on September 14, 2009. Only sealed bids properly completed and labeled as follows will be considered.

OG&E Electric Company
Long Term Coal Requirements
P.O. Box 321 N. Harvey
Oklahoma City, Oklahoma 73101-0321

Attention: Pat Shore, Mail Code 1208

- 4.5 Faxed or e-mail bids will not be considered.
- 4.6 OG&E reserves the right to reject any and all bid proposals.

5. EVALUATION AND AWARD.

5.1 RFP Evaluation Process.

OG&E will evaluate all bids which meet the minimum threshold requirements, and provide the Independent Evaluator with a copy of each bid. All bids will be evaluated based on the following criteria in the order listed, with the overriding evaluation principle that selecting the winning bidder(s) will result in a contract most beneficial to ratepayers. For example, if bids are deemed equal on delivered cost, they will pass on to the next criteria and so on until a successful bidder can be declared.

A. Evaluation Criteria.

1. Delivered Cost (mmBtu)
2. Quantity (largest amount bid)
3. Btu (highest average Btu)
4. Sulfur (lowest average Sulfur)
5. Creditworthiness

Using the evaluation criteria, the evaluation team will rank each bidder's bid based on the number of bidders participating in the bidding process.

5.2 Award Process.

A successful bid will be awarded based on the most attractive total package. OG&E will notify the successful bidder(s) by 5:00 P.M. CST on October 23, 2009. Notification will be sent via e-mail to the contact person on the Coal Sales Proposal Form of the company selected. All notifications will be followed up with a written confirmation.

In addition to notifying the successful bidder(s), OG&E will file its decision with the OCC identifying the successful bidder(s). OG&E will, unless ordered by the OCC as confidential, publicly disclose the successful bid(s) and mail copies of its OCC filing to all bidders, the Attorney General, and the Independent Evaluator. OG&E's filing shall include a copy of the successful bid(s) and rationale for selecting the successful bid(s). Should any bidder desire to protect its bid from public disclosure please refer to OAC 165:35-34-2(a) of Subchapter 34 of the OCC Rules, as referenced in Section 2.2 of this RFP.

As also provided in the OCC rules, any unsuccessful bidder, the Independent Evaluator, or the Attorney General may file a complaint with the OCC challenging OG&E's decision. The complaint shall be based on (1) OG&E's criteria for decision not being met as specified in Subchapter 34, (2) OG&E obtaining a waiver pursuant to OAC 165:35-34-3(e) of Subchapter 34, or (3) OG&E's development of the RFP document and bid evaluation procedures pursuant to OAC 165:35-34-3(a) of Subchapter 34. Each party shall have fifteen (15) days from October 23, 2009 to file their complaint with the OCC challenging OG&E's decision.

EXHIBIT "A"

COAL SUPPLY AGREEMENT

DATED AS OF

BETWEEN

AND

OKLAHOMA GAS AND ELECTRIC COMPANY

COAL SUPPLY AGREEMENT

THIS COAL SUPPLY AGREEMENT (“Agreement”), made and entered into this ___ day of _____, by and between _____, having an address of _____ (hereinafter referred to as “Seller”), and **OKLAHOMA GAS AND ELECTRIC COMPANY**, an Oklahoma Corporation, having an address at 321 North Harvey Ave., Oklahoma City, Oklahoma, (hereinafter, referred to as “Buyer”). Buyer and Seller now hereby desire and agree to enter in to an Agreement in accordance with the terms and conditions set forth herein.

WITNESSETH:

WHEREAS, Buyer is a public Utility rendering electric utility service within certain areas in the States of Oklahoma and Arkansas; and

WHEREAS, Buyer desires to secure, to the extent of the quantities and for the period hereinafter stated, a supply of coal of a quality hereinafter set forth.

WHEREAS, Seller represents that it is or will be capable of the commercial production of coal and that it owns, has leased or controls the hereinafter specified reserves of coal with the qualities and characteristics hereinafter set forth; and

WHEREAS, Buyer desires to purchase from Seller and Seller desires to sell to Buyer coal of the quality and in the amounts and upon the terms hereinafter set forth:

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereinafter set forth, it is agreed by and between the parties as follows:

SECTION 1 – Term of Agreement and Quantity of Coal.

(a) The term of this Agreement shall be for a period of _____ beginning _____ and ending on _____. During said term Seller shall sell and deliver and Buyer shall purchase and receive at the point of delivery, as defined in Section 3 hereof, _____ tons per year (the “Annual Quantity”).

(b) The Annual Quantity will be delivered in substantially equal monthly quantities which for purposes of this Agreement is defined as one-twelfth of the Annual Quantity, unless otherwise agreed to in writing by the parties.

(c) In the event that the Buyer fails to purchase and receive coal in substantially equal monthly quantities over the term (unless such failure is (i) due to Seller’s failure to deliver coal in accordance with its obligations hereunder, (ii) excused by an event of force majeure pursuant to Section 12 below, or (iii) otherwise addressed or resolved in writing by the parties) so that at the end of any month during the term the Buyer’s ratable volumetric obligation for the purchase and receipt of coal exceeds the

volume of coal actually purchased and received during that month by more than one (1) unit train, then the Seller shall have the right to notify and require the Buyer to make up such deficiency. Upon the receipt of such notice, the Buyer shall contact the Seller to arrange for make up of the deficiency during the then current Contract Year based upon a mutually agreeable schedule. Subject to the mutual agreement of Buyer and Seller, the Seller may increase its monthly shipment schedule by up to two (2) unit trains over the normal ratable quantity in order to make up of the deficiency.

(d) If at the end of any Contract Year during the term hereof (i) there exists a deficiency in the Buyer's purchase and receipt of coal, determined in accordance with Section 1(c) above, (ii) such deficiency is due to the failure of Seller to deliver coal in accordance with its obligations hereunder, and (iii) the amount of such deficiency is five percent (5%) or less than the Buyer's Annual Quantity, then the Buyer may elect to make up the deficient tons in the immediately following Contract Year, subject to a mutually agreeable delivery schedule, at a price equivalent to the lower of (x) the price in effect during the Contract Year in which the deficiency was incurred, or (y) the prevailing market price for such coal at the time the deficient tons are delivered.

(e) If at the end of any Contract Year during the term hereof (i) there exists a deficiency in the Buyer's purchase and receipt of coal, determined in accordance with Section 1(c) above, (ii) such deficiency is due to the failure of Buyer to purchase and receive coal in accordance with its obligations hereunder or the failure of Buyer's rail carrier to provide adequate service to transport the scheduled coal, and (iii) the amount of such deficiency is five percent (5%) or less than the Buyer's Annual Quantity, then the Seller may elect to deliver the deficient tons in the immediately following Contract Year, subject to a mutually agreeable delivery schedule, at a price equivalent to the greater of (x) the price in effect during the Contract Year in which the deficiency was incurred, or (y) the prevailing market price for such coal at the time the deficient tons are delivered.

SECTION 2 – Quality of Coal.

(a) Coal.

As used herein, "Coal" shall mean the crushed mineral substance classified as sub-bituminous B or C by the American Society for Testing and Materials.

(b) Analysis.

The quality of the Coal sold and purchased hereunder shall be determined by analysis of samples taken at Seller's Mine in accordance with Section 7 hereof.

(c) Coal Specifications.

Seller agrees to use a reasonable degree of care to deliver to Buyer Coal which is substantially free from impurities including, but not limited to, bone, slate, earth, rock, pyrite, wood, tramp metal, magnetic material and mine debris. Coal shall be sized so as to

be capable of passing through a 3 inch maximum mesh screen and shall be in accordance with the average specifications shown on Exhibit B, attached hereto and incorporated herein by reference.

(d) Unacceptable Coal.

In the event Seller loads and delivers to Buyer a trainload of Coal using the sampling methods prescribed in Section 7 herein outside any of the limit specifications for unacceptable Coal set forth in Exhibit C, the entire train load shall be deemed “Unacceptable Coal” and subject to penalties as provided herein.

Seller shall take all reasonable precautions to avoid loading and delivering Unacceptable Coal to Buyer; however, in the event Unacceptable Coal is loaded and delivered, Buyer shall receive a \$3.00/ton discount on such Unacceptable Coal, provided Buyer’s Manager of Fuels receives notice that Unacceptable Coal has been loaded and delivered to Buyer at least 4 hours prior to arrival of unit train at Buyer’s Generating station for unloading, otherwise, Buyer shall receive a \$5.00/ton discount on such Unacceptable Coal.

SECTION 3 – Source of Coal, Point of Delivery, Title, Loading Procedure.

(a) Source of Coal. The source of the coal to be delivered and received hereunder shall be the _____, as shown on the map attached hereto as Exhibit A (the “Mine”).

(b) Point of Delivery.

The said Coal sold and purchased hereunder shall be purchased by Buyer from Seller f.o.b. loaded into railcars at Mine (the “Point of Delivery”). Seller shall provide or cause to be provided at its sole cost and expense said railroad loading siding and track and loading facilities at the Point of Delivery adequate to accommodate a 135-car unit train whose capacity shall not exceed 16,500 tons of Coal, plus the necessary locomotive and power equipment, and to permit the loading of said train in not more than four (4) hours in open top cars having a marked capacity of not less than 200,000 pounds each. Buyer shall be responsible for providing adequate and timely availability of railcars.

(c) Title.

The title to such Coal shall pass to Buyer at the Point of Delivery upon Seller completing the loading of the unit train. Seller hereby warrants title to all coal delivered to Buyer pursuant to this Agreement which shall be delivered to Buyer free and clear of any liens or other claims.

(d) Loading Procedure.

Seller's trackage, storage and loading facilities shall be compatible with railcars owned or leased by Buyer, railroad locomotives and other equipment carrying Buyer's Coal purchased hereunder as of the date of this Agreement. Seller will operate its loading facilities twenty-four (24) hours per day, 365 days per year. Seller will load each unit train at Seller's expense in accordance with the loading procedures as defined herein. Seller will provide an even weight distribution within each railcar. Seller will complete the loading of each unit train within four (4) hours. Unless excused by Force Majeure as provided herein, Seller will pay Buyer for any increased transportation charges incurred as a result of Seller's failure to comply with the provisions for loading and related requirements as constituted in Buyer's applicable rail contract; provided, however, that Buyer will submit a statement to Seller setting forth such charges and the facts supporting the claims that such charges are attributable solely to such failure by Seller together with documentation that Buyer has paid such charges. A copy of the loading and related requirements in Buyer's applicable rail contract is attached hereto as Exhibit D.

SECTION 4 – Base Price

The Base Price for Coal delivered hereunder shall and does include all costs incurred by Seller for producing, processing and loading said Coal in accordance with all federal, state and local laws and regulations and any and all applicable taxes as of the date of execution of this Agreement excepting sales and/or use taxes if any which might be imposed on Buyer.

The Base Price ("Base Price") for all Coal (excluding only Unacceptable Coal as defined herein) per ton f.o.b. loaded in railcars at the Point of Delivery on an "as received basis" shall be as provided in the table below. The Base Price shall be adjusted for Governmental Impositions, as that term is defined and provided for in Section 9 hereof, in order to determine the "Adjusted Base Price".

<u>Year</u>	<u>Base Price/ton</u>
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SECTION 5 – Adjustments for BTU Value.

The Base Price per ton of Coal is based upon Coal having a heating value of 8800 BTU's per pound. Buyer and Seller recognize and agree that the BTU value of the Coal actually delivered hereunder may vary from said BTU value and the Adjusted Base Price per ton of Coal shall be adjusted each month in

order to compensate for any such variations in the BTU value of the Coal delivered hereunder during that month pursuant to the following formula:

$$TA = APB \times \frac{C-8800}{8800}$$

Where:

ABP = Adjusted Base Price in dollars as provided in Section 4.

TA = The price adjustment per ton for BTU value of Coal delivered to Buyer.

C = Monthly weighted average BTU's per pound of Coal delivered excluding Unacceptable Coal.

SECTION 6 - Weights and Un-weighed Train.

(a) Governing Weights.

The weights of the Coal sold by Seller and purchased hereunder by Buyer shall be determined on weighing systems ("scales") at the Point of Delivery. Such scales shall be properly inspected and certified by the State of Wyoming (or its designated agent) at intervals of at least every six (6) months. The weights thus determined by such scales shall be accepted as the quantity of the Coal for which invoices are to be rendered and payments made in accordance with Section 8 hereof.

(b) Inspection of Scales.

Buyer shall have the right, to have a representative present at any time and all times to observe the weighing of the Coal. If either party should at any time question accuracy of the scales, such party may request a prompt test, and if necessary adjustments of such scales, the results of which shall be certified by State of Wyoming, all at the requesting party's initial expense. If any inspection reveals an error in weight in excess of plus or minus one and one-half percent (1½%), one-half (½) of the Coal shipped during the period since the last preceding test shall be adjusted by the amount of the error shown. If such inspection reveals error in weights in excess of one and one-half percent (1-1/2%) the party which benefited from such error shall bear the costs of such inspection and adjustment. The weight thus determined by such scale shall be accepted as the quantity of Coal for which invoices are to be rendered and payments made in accordance with Section 8 hereof until the subsequent regular inspection is made in accordance with (a) above.

(c) Unweighed Trains.

For purposes of this Agreement, an unweighed train shall mean any train for which the Seller's Mine or Substitute Mine obtains valid weights for fewer than twenty-five (25) railcars. If an unweighed train is caused by a breakdown of scales, the lading weight per railcar of each unweighed train shall be determined by averaging the lading weight per railcar of the last ten (10) trains of similar type railcars to the same destination loaded under this Agreement weighed at the Mine prior to such. If less than ten (10) trains loaded under this Agreement were weighed at the Mine prior to the breakdown, the weight per railcar shall be determined by averaging the weight per railcar of the train(s) under this Agreement weighed at the Mine or Substitute Mine prior to breakdown as well as the lading weight of similar railcars to the same destination of the train(s) loaded with coal under this Agreement after the scales are repaired, so as to comprise a ten (10) weighted train average; provided, however, that no train for which the Mine or Substitute Mine has obtained valid weights on fewer than twenty-five (25) railcars shall be included in the (10 trains to be averaged. For trains where valid net weights are obtained on twenty-five (25) or more cars, the average net weight of those cars will be applied to the remaining cars in the train.

SECTION 7 – Sampling and Analysis.

For each trainload of Coal delivered hereunder, Seller shall take or cause to be taken at the Point of Delivery representative samples of such Coal and by proper analysis, cause to be determined the quality and characteristics of the Coal loaded and delivered on that train.

The sampling and analysis shall be performed in accordance with current methods approved by American Society for Testing and Materials (ASTM) or such alternate methods as both parties may agree upon.

Each sample taken by Seller shall be segregated into three representative parts; one for use by Seller, one to the Buyer's lab, and one to be retained by Seller for not less than thirty (30) days under proper storage conditions.

The results of the sampling and analysis by Seller shall be accepted as the quality and characteristics of the Coal loaded and delivered hereunder in the trainloads represented by such samples and the same shall be accepted as the monthly analysis for the trainloads loaded and delivered during such month; provided, however, that if Buyer should at any time question the accuracy of the analysis made by Seller, Buyer shall have the right to have the third part of the Coal sample analyzed by Commercial Testing & Engineering Co., (CTE) Denver, Colorado, or a mutually agreed upon commercial laboratory, and such laboratory shall use methods approved by ASTM or other mutually acceptable methods. The results obtained by such analysis shall be accepted as the quality and characteristics of the Coal represented by such samples. Buyer shall pay the cost of such analysis. The price for the Coal represented by such

samples shall be adjusted in accordance with the provisions of this Agreement and any amounts due either Seller or Buyer shall be paid in accordance with Section 8 hereof.

Seller shall forward to Buyer by expeditious method a copy of the results of each such short proximate analysis (moisture, ash, BTU, and Sulfur) within thirty-six (36) hours after loading the train. Buyer shall have the right to have a representative present at any and all times to observe said sampling and analysis and to take its own sample.

SECTION 8 – Billing and Payment.

- (a) On or before the fifth working day after the fifteenth and the end of each calendar month, Seller shall invoice Buyer for Coal delivered by Seller to Buyer during the preceding semi—monthly period. Such invoice shall show the actual amounts of Coal delivered to Buyer, as determined by Section 6 hereof, times the Base Price for Coal having an assumed BTU value of 8800 BTUs per pound. Buyer shall pay Seller within 20 days after receipt of such invoice by Federal Reserve wire transfer of funds, the amount of such invoice, subject, however, to adjustment as provided in Section 8 (b) below.
- (b) The parties hereby recognize that with respect to Coal covered by the invoice rendered pursuant to Section 8 (a) above, the price adjustment factors referred to in Sections 2(d), 4(a), 5, 9 and 10, applicable to the appropriate calendar month may not be available at the time such invoice is prepared by Seller and furnished to Buyer. Upon receipt of information supporting any of the price adjustment factors referred to in Sections 2(d), 4(a), 5, 9 and 10 applicable to the Coal delivered in the calendar month covered by such invoice, Seller or Buyer, as appropriate, shall prepare and furnish to Buyer or Seller an appropriate debit or credit adjustment which shall be reflected on the next semi-monthly billing.
- (c) All invoices (including supplemental invoices) shall be reasonably complete in detail to indicate volume delivered and all price adjustments in accordance with the provisions of this Agreement.

SECTION 9 - Adjustments to the Base Price for Royalties, Taxes and Third Party Impositions.

- (a) Adjustments to the Royalty Component.

As of _____ the Royalty Component is calculated to be _____ per ton as shown on Exhibit E. If the rates or amounts of royalties payable by Seller, its parent, or their respective subsidiaries or affiliates, on coal leases at the Mine change, or if statutes, rules or regulations governing how royalties are calculated, or if other components of the Adjusted Base Price change, the Royalty Component shall be adjusted to reflect any such change effective as of the date of such change.

(b) Adjustments to the Tax Component (Excluding Federal Income Taxes).

As of _____ the Tax Component is calculated to be _____ per ton as shown on Exhibit E. During each year the tax amounts, included in the Adjusted Base Price may be estimated by Seller, until the tax amounts can be finalized by Seller. The Tax Component shall include severance taxes, or other taxes measured by production and all other taxes including the Federal Black Lung Tax, the Federal Reclamation Fee, the Sales and Use Tax (if applicable), except Federal Income Taxes, which are attributable to Seller's Mine. If any of the above taxes change or if other components of the Adjusted Base Price change, the applicable Tax Component shall be adjusted to reflect such changes effective as of the date of such change.

(c) Adjustments for Third Party Impositions.

Except for changes or adjustments in those royalties and taxes which are addressed in Section 9(a) and 9(b) above, in the event of (i) the enactment, amendment, modification, or repeal of any federal, state or local legislation, regulation, rule or ordinance or any judicial, legislative or executive change in the wording, interpretation or enforcement of any federal, state or local legislation, order, ordinance, rule or regulation or any mandate, guideline or policy issued pursuant thereto, or (ii) the imposition of any taxes, fees, assessments, levies or costs of any kind by any government, governmental agency or judicial authority, which has an effect upon Seller's cost of mining, producing, processing, hauling or loading Coal (including any taxes, or other charges levied with respect to the mining or selling of Coal) at the Mine (hereinafter referred to as a "Third Party Imposition"), then Seller shall have the right to notify Buyer of the effect thereof on Seller's cost, including sufficient detail to demonstrate such cost increase or decrease, and such increase or decrease cost per ton prorated over all Coal produced at the Mine shall be added to or subtracted from the Base Price.

Section 10 – Adjustment of #SO₂

If the weighted average pounds of SO₂ per million BTU (“Lbs. SO₂/MMBTU”) on an as-received basis of Coal accepted by Buyer in a calendar month differs from the base Lbs. SO₂/MMBTU, then an SO₂ adjustment shall be applied to the Adjusted Base Price in an amount determined by the following formula shall apply:

$$\text{Sulfur adjustment} = [(\text{Base SO}_2 - \text{Actual SO}_2) \times (\text{Btu}) \times (\text{ADMPI})] / 1,000,000$$

Where:

- Base SO₂ = The base SO₂ amount is 0.80# per million Btu
- Actual SO₂ = The wt'd average Lbs. SO₂/MMBTU (as-received) for Coal, as determined in accordance with Section 7, for all Coal shipped for the month.
- Btu = The wt'd average, as-received heat content, as determined in accordance with Section 7, for all Coal shipped for the month.
- ADMPI = The average price of SO₂ allowances expressed in dollars per ton of SO₂. The average price of SO₂ allowances is determined by the monthly SO₂ price indices published in Air Daily for the calendar month of delivery.

Lbs. SO₂/MMBTU shall be calculated as follows:

$$\text{Lbs. SO}_2/\text{MMBTU} = (\% \text{ Sulfur} \times 20,000) / \text{Wt'd average Btu/lb.}$$

Section 11 – Records.

- (a) Buyer and Seller shall keep accurate records, books of account, and supporting data, all in conformity with generally accepted accounting principles, as are required or advisable for the appropriate administration of this Agreement.
- (b) Seller and Buyer shall each have the right at all reasonable times, upon written notice to the other, to examine the records pertaining hereto kept by the other including loading, weights, and analyses of the Coal delivered hereunder for a period not to exceed the most recent two (2) years. Notwithstanding the above, Buyer agrees that any routine audits it elects to conduct will be done expeditiously. At Buyer's request, Seller shall permit Buyers' in-house audit staff or a mutually acceptable, independent certified public accounting firm and/or engineering firm to examine Seller's books and records and/or mining operations at the Mine to verify the impact on Seller's cost pertaining to any Section 9 adjustments.

Section 12 – Force Majeure.

(a) Defined.

The term "Force Majeure" as used herein shall mean acts of God, acts of the public enemy, blockades, insurrections, strikes, or differences with workmen, riots, disorders, civil disturbances, fires, explosions, storms, floods, landslide, washouts, labor and material shortages, boycotts, break-downs of or damage to plants, equipment or facilities resulting in total or partial non-operation of Buyer's Generating Units or the Mine, interruptions or break-downs of the power system interconnected with Buyer's or Seller's facilities, interruptions or delays to transportation, embargoes, acts of military authorities, acts of local, state or federal agencies, regulatory or legislative bodies, court actions, arrests and restraints, and, without limitation by enumeration, any other cause or causes not reasonably within the control and without the fault or negligence of the party in default which wholly or partly prevent the producing, processing and loading of the Coal by the Seller or the receiving, transporting, accepting and/or utilizing of Coal by Buyer. The basis for Seller's Force Majeure shall be the Mine and its associated loading facilities. The basis for Buyer's Force Majeure shall be Buyer's owned or controlled generation units consisting of the Sooner and Muskogee Stations located in the State of Oklahoma.

(b) Force Majeure As a Result of Governmental, Economic or Regulatory Conditions.

Force Majeure shall also include conditions in which laws or regulations impair, in whole or in part, the ability of Buyer to burn Coal supplied hereunder either because of direct prohibition or causes an economic obligation which is grievous or oppressive either because of the absence of compensating benefits or because compensating benefits are disproportionately low in comparison to the obligation, resulting from such laws or regulations; provided, however, that such laws or regulations did not exist on the Effective Date of this Agreement. Examples of such grievous or oppressive obligations include, but are not limited to, a tax on the carbon content of fuel that puts coal at a competitive disadvantage with other fuels, or a state or county tax that puts Wyoming or Campbell County coal at a competitive disadvantage with coals from other regions.

(c) Effect Hereunder.

If because of Force Majeure either party hereto is unable to carry out all or any portion of its obligations under this Agreement, and if such party shall promptly give to the other party written notice of such Force Majeure, then the obligations of the party giving such notice shall be suspended, forgiven and reduced to the extent made necessary by such Force Majeure and during its continuance; provided, however, that the party giving such notice shall use reasonable efforts to eliminate such Force Majeure insofar as possible with a minimum of delay. Nothing herein contained shall cause the party affected by the Force Majeure to submit to unreasonable conditions or restrictions or to submit to an unfavorable labor agreement, and it is agreed that any settlement of labor strikes or differences with workmen

shall be entirely within the sole discretion of the affected party. Buyer shall pay for all Coal to which Buyer has obtained title prior to the date of Force Majeure. In the event of Seller's extended Force Majeure of more than sixty (60) days and with the approval of Buyer, such approval not to be unreasonably withheld, Seller may, but is not obligated to, deliver from an alternate source, coal of comparable quality and technical suitability, subject however to the terms and conditions of Buyer's rail contract.

In the event Force Majeure causes only a partial reduction in the total quantity of Coal Seller can deliver from the area set out on Exhibit A, and subject to any other Seller contractual limitations and quality limitations, Seller shall deliver to Buyer its pro rata share of Coal produced from Seller's Mine during the period of such partial reduction. Such pro rata share shall be determined by the ratio of actual output to committed production from Seller's Mine. In the event Force Majeure causes only a partial reduction in the quantity that Buyer can purchase, Buyer shall purchase from Seller its pro rata share of coal for the affected unit(s) during the period of partial reduction. Such pro rata share shall be determined by the ratio of actual purchases to scheduled purchases for Buyer's affected unit(s).

Either party shall have the right to elect to suspend the purchase or sale of Coal, as the case may be, for the period of time during which such Force Majeure may exist and Buyer, if it so elects, shall have the right during such period to purchase Coal from other sources and Seller, if it so elects, shall have the right during such period to sell Coal to other buyers.

Any tonnage affected as a result of a Force Majeure or Partial Force Majeure shall only be made up by mutual agreement between the Seller and Buyer.

SECTION 13 – Use of Coal.

The ultimate use or other disposition of Coal purchased under this Agreement shall be determined by Buyer, in its sole discretion.

SECTION 14 – Notices.

(a) Notices to be in writing – Exceptions – Method of Delivery.

Any notice, request, consent, demand, report or statement, which is given to or made upon either party hereto by the other party hereto under any of the provisions of this Agreement, shall be in writing unless it is otherwise specifically provided herein, and shall be treated as duly delivered when the same is either (i) personally delivered to the Manger of Fuels in case of a notice to be given Buyer, or personally delivered to the President in the case of notice to be given to Seller, (ii) sent by facsimile, or, (iii) deposited in the United States mail, postage prepaid, and properly addressed as follows:

- (1) If the notice is to Buyer,
- Oklahoma Gas and Electric Company
P.O. Box 321, M/C GB58
Oklahoma City, Oklahoma 73101
Attention: Manager Fuels
(or to such other person or such other address as Buyer shall have designated by due notice to Seller).

And

- (2) If the notice is to Seller,
- _____

(b) Notices as to Operating Matters.

Any notice, request or demand pertaining to matters of an operating nature may be delivered by mail, messenger, telephone, telegraph, facsimile or verbally, to such agent of the party hereto being notified as may be appropriate; and if given by telephone, telegraph, facsimile or verbally shall be confirmed in writing as soon as practicable thereafter, if the party to whom the notice is given so requests in any particular instance.

SECTION 15 – Waiver and Amendments.

(a) Non-waiver.

The failure of either party hereto to require strict performance of any provisions of this Agreement by the other party hereto, or the forbearance to exercise any right or remedy hereunder, shall not be construed as a waiver by such party of the right to require strict performance of any such provisions or the relinquishment by such party of any such right or remedy it might have with respect to any subsequent breach of such provisions.

(b) Remedies Cumulative.

Each remedy specifically provided for under this Agreement shall be taken and construed as cumulative and in addition to any other remedy provided for herein or by law, including but not limited to actions for specific performance.

(c) Amendments.

Any and all amendments, supplements and modifications agreed to by the parties to this Agreement shall be in writing and signed by the parties hereto.

SECTION 16 – Indemnity.

- (a) Seller hereby agrees to indemnify, save and hold harmless Buyer, its representatives, employees and agents or invitees from and against any and all losses, claims, demands, suits, actions, payments and judgments that may occur or be claimed with respect to any damage to property, or injury to or death of

- any person or persons, or otherwise, resulting from any negligent act done or omission made by or through Seller, its representatives, employees, agents or invitees, in the performance of this Coal Supply Agreement, including any and all expense, legal or otherwise, incurred in the defense of any claim or suit.
- (b) Buyer hereby agrees to indemnify, save and hold harmless Seller, its representatives employees and agents or invitees from and against any and all losses, claims, demands, suits, actions, payments and judgments that may occur or be claimed with respect to any damage to property, or injury to or death of any person or persons, or otherwise, resulting from any negligent act done or omission made by or through Buyer, its representatives, employees, agents or invitees, in the performance of this Coal Supply Agreement, including any and all expense, legal or otherwise, incurred in the defense of any claim or suit.
- (c) Neither Buyer nor Seller shall be liable to the other for any special, indirect, incidental or consequential damages, except as provided herein. BUYER AGREES THAT SELLER MAKES NO EXPRESS WARRANTIES OTHER THAN THOSE SET FORTH IN THIS AGREEMENT. SELLER MAKES NO WARRANTY CONCERNING THE SUITABILITY OF COAL DELIVERED HEREUNDER FOR USE IN BUYER'S GENERATING UNITS, OR OTHER ELECTRIC GENERATION STATION. ALL WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE ARE SPECIFICALLY EXCLUDED.

SECTION 17 – Default.

(a) Failure to Deliver.

In the event that Buyer has provided sufficient unit trains and Seller fails to sell and deliver to Buyer, for reasons other than Force Majeure, in any two consecutive months the quantity of coal scheduled for such months or if, with respect to any individual coal quality characteristic, the coal delivered under this Agreement for two (2) consecutive shipments is outside any of the limit specifications for coal set forth in Exhibit C or if, during any calendar year during the term of this Agreement, the quality specification for any three (3) single shipments of Coal hereunder is outside any of the limit specifications for Coal set forth in Exhibit C, Buyer shall have the right to immediately suspend shipments until Seller gives adequate assurance of performance to this Agreement and the failure to give such adequate assurance shall result in termination of this Coal Supply Agreement.

(b) Termination.

If either party shall default in any covenant, condition or obligation of this Agreement which is not excused by the provisions of Section 12 Force Majeure, and, if the defaulting party shall continue in default of any said covenant, condition or obligation of this Agreement sixty (60) days after written notice thereof by the non-defaulting party to such other party of the existence of such default, or, if more than sixty (60) days are required to correct, with reasonable diligence, the matters complained of in said notice, and such defaulting party shall fail within said period to commence such correction and thereafter prosecute the same to completion with reasonable diligence, the non-defaulting party shall, at its option, have the right to terminate this Agreement by written notice thereof to such other party.

(c) The remedies set forth in (a) and (b) above are in addition to any other right or remedy given in this Agreement.

SECTION 18 – Applicable Law.

This agreement shall be construed and governed in accordance with the laws of the State of Oklahoma.

SECTION 19 – Successors and Assigns.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns; provided, however, this Agreement may not be assigned or otherwise transferred by either Seller or Buyer without the written consent of the other party such consent not to be unreasonably withheld; except, that a party can assign to a partnership, corporation, or other business entity in which assignor has an interest or to a corporation succeeding to substantially all of its assets by merger, consolidation or conveyance, wherein assignee assumes all of assignor's obligations and assignor is not thereby relieved.

SECTION 20 – Headings Not to Affect Construction.

The headings to the respective sections and paragraphs of this Agreement are inserted for convenience and are neither to be taken to be any part of the provisions hereof nor to control or affect the meaning, construction or effect of the same.

SECTION 21 – Confidentiality.

Except as hereinafter provided, the information contained in this Agreement is confidential and neither party shall disclose to third parties such information unless, in the opinion of such party's counsel, disclosure is required by law or by regulation, the party to whom disclosure is made is affiliated or a financial institution for the purpose of financing, or unless the parties otherwise agree in writing.

SECTION 22 – Written Instrument Contains Entire Agreement.

This written instrument contains the entire Agreement between the parties hereto in respect to the subject matter, and there are no other understandings or agreements between said parties, or either of them, in respect thereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

BUYER:

SELLER:

**OKLAHOMA GAS AND
ELECTRIC COMPANY**

By: _____ By: _____

Title: _____

Title: _____

List of Exhibits

Exhibit A – Mine Map

Exhibit B – Average Quality Specifications

Exhibit C – Unacceptable Coal Specifications

Exhibit D – Railroad Loading Provisions

Exhibit E – Adjustment Factors

EXHIBIT “B”

**CREDIT APPLICATION FORM
OG&E ELECTRIC COMPANY**

1. Credit Requirements and Financial Information for the Applicant.

Please submit the following information for the Applicant and/or the Credit Support Provider of the Applicant:

1. Three most recent Annual Reports, if available.
2. Three most recent SEC Form 10-K; if unavailable, please provide three years of most recent audited financial information, which include Balance Sheet, Income Statement, Cash Flow Statement, and accompanying related Notes.
3. Most recent SEC Form 10-Q; if unavailable, most recent audited quarterly financial information, including Balance Sheet, Income Statement, Cash Flow Statement, and accompanying related Notes. If audited quarterly information is unavailable, provide most recent quarterly or monthly financial data accompanied by an attestation by the Applicant’s or the Applicant’s Credit Support Provider’s Chief Financial Officer that the information submitted is a true, accurate, and fair representation of the Applicant’s financial condition.
4. Applicant’s Senior Unsecured Credit rating from the following agencies.

Standard & Poor’s

Moody’s Investor Service

5. If Senior Unsecured Credit Ratings are unavailable, provide the Applicant’s corporate issuer ratings for the following agencies.

Standard & Poor’s

Moody’s Investor Service

Please provide the Applicant’s Tangible Net Worth as of the last audited fiscal year end.

Applicant’s TNW

Is the Applicant:

1. Operating under Federal Bankruptcy laws or bankruptcy laws in any other jurisdiction? (Y/N)

Applicant

2. Subject to pending litigation or regulatory proceedings (in state court, federal court, or from regulatory agencies, or in any other jurisdiction) which could have material impact on the Applicant's or the Applicant's Credit Support Provider's financial condition? (Y/N)

Applicant

3. Subject to collection lawsuits or outstanding judgments, which could impact solvency? (Y/N)

Applicant

Please provide a statement disclosing any existing, pending, or past adverse rulings, judgments, litigation, contingent liabilities, revocations of authority, administrative, regulatory (state, FERC, SEC, DOJ, or other) investigations and other matters relating to financial or operational status for the past three years that arise from the sale of coal or materially affect current financial or operational status.

PRODUCER – BROKER STATEMENT

This statement is expressly intended for the benefit of Oklahoma Gas and Electric Company.

The undersigned Producer has authorized the undersigned Broker to offer for sale the coal to be produced by Producer as described in the Oklahoma Gas and Electric Company (“OG&E”) Coal Sales Proposal Form. Such Broker (1) is authorized to submit a bid or negotiate with OG&E concerning such coal, and (2) is authorized to make an arrangement for the sale thereof, by accepting or acknowledging a Purchase Order for such coal from OG&E. Any such action by Broker will be binding on Producer, and Producer will mine and deliver the coal covered by such Purchase Order in accordance with and subject to the Terms and Conditions constituting a part of the agreement in the from of such Purchase Order.

The undersigned Producer further designates said Broker as Producer’s Attorney-in-Fact for the purpose of handling all transactions, negotiations and other matters with OG&E in respect to coal which such Broker is authorized to offer, including, but not limited to (1) entering into, amending, or terminating a Purchase Order, (2) settling any claim or dispute, and executing any release, (3) giving and receiving notices, (4) billing coal delivered, and (5) receiving money due or to become due.

Producer and Broker agree that this authorization shall be binding in the event (a) the Broker acts as the agent for Producer (b) the Broker purchases the coal from Producer and resells the coal to OG&E. Producer and Broker further agree that this authorization shall continue and remain in effect until the expiration of any Purchase Order directly resulting from a Proposal. Producer and Broker agree that they shall be jointly and severally liable to OG&E for any breach of any of the Terms and Conditions of said Purchase Order. In the event of any termination of this authorization prior to the expiration of any such Purchase Order, Producer and Broker will hold harmless OG&E from and against any claims, action, causes of action, damages or costs resulting from the termination of such authorization.

Producer hereby expressly warrants that is has good title to all coal to be delivered hereunder and that such coal is free and clear of all liens, encumbrances, and claims of third parties.

Producer hereby dedicates up to _____ tons per month for the period of _____ through _____ under this Coal Sales Proposal. Producer certifies that none of the production dedicated to this Coal Sales Proposal is dedicated to other commitment, or is subject to other encumbrances which include but are not limited to Rights of First Refusal, etc.

PRODUCER

BROKER

(Name of Company)

(Name of Company)

By _____

By _____

Date _____

Date _____

EXHIBIT "C"

**COAL SALES PROPOSAL FORM
OG&E ELECTRIC COMPANY
LONG TERM COAL BID**

In response to OG&E's invitation for bids to furnish coal to OG&E's coal-fired generating plants in compliance with the terms and conditions stated in OG&E's Request for Proposal ("RFP) of August 11, 2009, the undersigned

(1) a corporation organized under the laws of the State of _____

(2) a partnership consisting of _____

proposes to furnish coal in the quantities and qualities at the price stated in this long term coal bid. The bidder represents that it is a coal producer or sales agent _____.

BIDDER INFORMATION:

(Name) (Mailing Address)

(City, State, Zip Code) (Telephone)

(Contact Name) (Telephone and E-mail address)

*Note: If bidder of this coal is not the producer, the attached Producer-Broker Statement must be executed.

PRODUCER INFORMATION (If different from Bidder)

(Name) (Mailing Address)

(City, State, Zip Code) (Telephone)

(Contact Name) (Telephone and E-mail address)

1. Coal is offered for a term beginning _____ and ending on _____.

2. The name of the mine is _____.

The mine is located in _____.

The mine's License Number is _____ and Permit Number is _____.

The seams to be mined are _____.

The mining method is _____.

3. Annual Quantity and Price (f.o.b. railcar at loading point).

	Quantity		Price
	Base (Tons/Yr)	Flexibility* (Tons) or (%)	\$/Ton
2011	_____	_____	_____
2012	_____	_____	_____
2013	_____	_____	_____
2014	_____	_____	_____
2015	_____	_____	_____

* Seller is capable of adjusting tonnages _____ tons per quarter with notification by OG&E received no less than _____ days prior to date of adjustment. Seller is capable of adjusting tonnages _____ tons annually with notification by OG&E received no less than _____ days prior to date of adjustment.

4. One or more test shipments can be made as requested beginning _____.

5. Rail Loading Information.

Loading capacity is _____ railcars in _____ hours.

Please describe:

(a) Weighing capabilities, if any. _____

(b) Sampling capabilities, if any. _____

6. Coal specifications as received at delivery point will be better than or equal to the following.

	<u>Monthly Average Guarantee</u>	<u>Per Shipment Rejection Limits</u>	<u>Per Shipment Suspension Limits</u>
Btu/Lb (min)	_____	_____	_____
Moisture % (max)	_____	_____	_____
Ash % (max)	_____	_____	_____
Total Lbs. SO ₂ /MMBtu	_____	_____	_____
Ash Fusion (Temp H=W)	_____	_____	_____
Grindability (min) (HGI)	_____	_____	_____
Volatile Matter (min)	_____		
Size	_____ with no more than _____ % below 1/4"		

_____ % of coal will be washed.

_____ % full run of mine product crushed to top size indicated above.

_____ % run if mine product with larger than top size shown above removed, but with no intermediate sizes removed.

_____ % other (blends, mixes, etc.).

7. The coal to be sold, if my bid is accepted, will be produced from a:

(a) Union Mine _____

(b) Non-Union Mine _____

8. Include your quality analysis as required in section 3.8 of the RFP, and the quality information in section 3.10 of the RFP.

9. Exceptions to OG&E's long term coal bid should be identified by item number shown on this "Coal Sales Proposal Form". For each exception, please indicate how much your price would have to be adjusted in order for you to comply with the terms and conditions requested in this proposal.
