



## Take or Pay Gas Claim

### 1. Introduction

This document summarizes key information and themes related to the Enoch Cree Nation's (ECN) claim for underpaid gas royalties during the "Take-or-Pay" (TOPGAS) era (1982-1994). The analysis focuses on the wrongful deduction of TOPGAS financing charges by producers, impacting ECN's rightful royalties from on-reserve gas production.

### 2. Background

- **TOPGAS Contracts:** These contracts obligated gas purchasers (primarily TransCanada Pipelines Limited - TCPL) to pay for a minimum gas volume annually, regardless of market conditions. Producers passed on financing and interest charges related to these contracts, known as TOPGAS charges, to First Nations via deductions in royalty calculations.
- **Exempt Status of First Nations:** A 1998 Alberta Court ruling established that TOPGAS charges were not permissible deductions from First Nations gas royalties. However, pursuing compensation through conventional courts faced time limitation challenges.
- **Federal Settlements & the Specific Claims Tribunal:** The Specific Claims Tribunal, established in 2008, provided First Nations a venue to address claims related to Canada's inaction in preventing these deductions, which violated its fiduciary duties under the Indian Oil and Gas Act. Numerous settlements have been reached with other First Nations, including:
  - **Blood Tribe (2018):** Negotiated a settlement of \$17,600,000 for TOPGAS charges between 1977 and 1994.
  - **Beaver Lake Cree Nation (2020):** Accepted a \$2,974,794 settlement for their TOPGAS claim.
  - **Siksika Nation (2021):** Filed a claim and subsequently accepted a negotiated settlement of \$5,162,198.

1 **3. Enoch Cree Nation's Claim**

- 2 • No settlement has been reached yet between ECN and Canada for TOPGAS charges.
- 3 • GuildOne's data analysis, spanning 1982-1994, reveals significant potential
- 4 underpayment due to these wrongful deductions.

5 **4. TOPGAS Charges: Mechanism and Impact**

- 6 • **TCPL's Financing Scheme:** Facing market challenges in the 1970s and 1980s, TCPL
- 7 restructured its debt by transferring liabilities to TOPGAS Holdings Ltd., a financing
- 8 vehicle created in partnership with Canadian banks.
- 9 • **Cost Allocation and Deductions:** TCPL embedded its financing and interest charges into
- 10 the Alberta Cost of Service (ACOS) fees charged to producers. This fee, regulated by the
- 11 Alberta Petroleum and Marketing Commission, covered various gas marketing, metering,
- 12 and transportation costs. Producers then deducted these inflated ACOS fees (inclusive
- 13 of TOPGAS charges) before calculating royalties owed to First Nations.
- 14 • **Impact on Royalty Calculations:** Deducting these charges, deemed unlawful, artificially
- 15 lowered the gas sales value on which ECN's royalties were calculated. The "revised gas
- 16 royalty" calculations, reflecting the exclusion of TOPGAS charges, demonstrate a
- 17 substantial difference in owed royalties.

18 **5. IOGC's Response and Industry Resistance**

- 19 • **IOGC Review and Reassessment (1982-1990):** Recognizing the unfair burden on First
- 20 Nations, the Indian Oil and Gas Canada (IOGC) reviewed pricing data and attempted to
- 21 recover owed royalties by recalculating based on an adjusted "New Price/E3m3," which
- 22 excluded TOPGAS charges.
- 23 • **Industry Pushback:** Producers disputed IOGC's position and refused to recalculate past
- 24 royalties or cease deducting TOPGAS charges from ongoing royalty calculations.

25 **6. Legal Precedent: Stoney Tribal Council v. PanCanadian Petroleum (1993)**

- 26 • This landmark case set a precedent by ruling that both TOPGAS charges and Operating,
- 27 Marketing, and Administrative Charges (OMAC) were impermissible deductions from
- 28 First Nations royalties. The court ordered PanCanadian Petroleum to recalculate and
- 29 repay underpaid royalties for 1983-1993.

1 **7. Data Analysis: Key Highlights**

- 2 • **Production Data:** The analysis included detailed data on gas production from ECN lands  
3 during the TOPGAS era. Five producers operated on Enoch lands: Acclaim, Chevron,  
4 CNPC, ConocoPhillips, and Canadian Jorex.
- 5 • **Cost Components:** Data on ACOS fees, D1/D2 rates, and product quality charges for each  
6 year and operator were meticulously analyzed.
- 7 • **Missing Data Extrapolation:** Predictive modeling techniques were employed to fill in  
8 gaps in available data for comprehensive assessment.
- 9 • **Price Comparison:** Visualizations comparing "Old Price" (with TOPGAS deductions) and  
10 "New Price" (without deductions) starkly illustrate the significant price discrepancies  
11 and their impact on royalty calculations.

12 **8. Conclusion**

13 The evidence strongly suggests that ECN experienced substantial financial losses due to the  
14 wrongful deduction of TOPGAS charges from its gas royalties. Drawing on legal precedent and  
15 leveraging comprehensive data analysis, ECN is well-positioned to pursue its claim for  
16 underpaid royalties through the Specific Claims Tribunal. The successful settlements achieved  
17 by other First Nations serve as encouraging examples for ECN's pursuit of rightful  
18 compensation.

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