

Interborough Express: Can These Pipes Be Relocated?

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In a previous article,² I suggested that the two pipes of the Buckeye Pipeline should be relocated from a tube of the East New York Tunnel, to make that tube available for use by Interborough Express trains. An open question was, “Can the Long Island Railroad (LIRR) require that the pipes be relocated.” After further investigation, the answer appears to be “Yes.” The real question is, “Who pays?” Regardless, relocation of the pipes should be worth the cost.



Sign on a gate to Bay Ridge Branch right of way³

This is a condensed explanation, based on documents provided to me by the MTA and public records, most of which are attached to this article.

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² [There Should Be a Broadway Junction Station on the Interborough Express](#)

³ Photo by the author in Shoprite parking lot at McDonald Ave. and Ave. I, Brooklyn, NY, March 26, 2024.

The Original License

Buckeye Partners L.P. operates a pipeline along the Bay Ridge Branch of the LIRR under a license originally granted by the LIRR to Long Island Pipe Line in 1965,⁴ as amended.⁵ The original licensee was a subsidiary of a predecessor of the present Buckeye Partners (all referred to here as “Buckeye”).⁶

The license permitted Buckeye to construct, operate and maintain two 12-inch petroleum pipelines along the Bay Ridge Branch of the LIRR, as well as pipelines on other parts of the LIRR. That agreement provided that the LIRR could require Buckeye to relocate the pipes at the LIRR’s request for railroad purposes, with Buckeye to pay the cost of relocation.⁷

Sale of the Bay Ridge Branch and Corporate Changes

Later in 1965, the PRR sold 100% of the LIRR stock to New York State and it became part of what is now known as the Metropolitan Transportation Authority (MTA).⁸ Then, as of January 20, 1966, the LIRR sold the Bay Ridge Branch, used only by a few freight trains, to a subsidiary of the PRR, the Pennsylvania Tunnel and Terminal Company (PTT).⁹ The sale agreement included “all easements, licenses, leases, and rights of every kind.”¹⁰

⁴ Agreement as of June 1, 1965, notarized May 26, 1965 (copy attached).

⁵ Settlement Agreement as of March 1, 1976, discussed below (copy attached). Although there was a Second and Third Amendment, they do not relate to the Bay Ridge Branch. Other transactions, discussed below, also affect the LIRR’s present rights.

⁶ See <https://www.company-histories.com/Buckeye-Partners-LP-Company-History.html>; Certificate of Merger, available at https://bizimage.ohiosos.gov/api/image/pdf/B485_1798 (copy attached).

⁷ Settlement Agreement, §8.

⁸ “State in Accord With the Pennsy on Buying L.I.R.R.” The New York Times, June 3, 1965, available at <https://timesmachine.nytimes.com/timesmachine/1965/06/03/97204704.pdf>.

⁹ Indenture, recorded at Kings County, Reel 49, Page 394 (copy attached). NY City real property records are in its ACRIS system at <https://www.nyc.gov/site/finance/property/acris.page>.

¹⁰ *Id.* at p. 4.

On February 1, 1968, the New York Central Railroad was merged into the PRR, which adopted the new company name “Pennsylvania New York Central Transportation Company” and the tradename “Penn Central.”¹¹

On June 21, 1970, Penn Central became bankrupt and, thereafter, was controlled by Trustees.¹²

The Settlement Agreement

Some aspects of the 1965 pipeline license agreement were unclear or incorrect. Therefore, a four-way Settlement Agreement was made as of March 1, 1976 among the LIRR (then an MTA subsidiary), Buckeye (owned by Penn Central), the Trustees of Penn Central, and PTT (owned by Penn Central).¹³

According to the preamble of the Settlement Agreement, the original pipeline agreement did not address the effects of the sale of the Bay Ridge Branch from the LIRR to PTT in 1966 and overlooked a 1928 lease agreement between PRR and PTT, under which PRR had been entitled to receive the pipeline license compensation, rather than LIRR or PTT.¹⁴

The original agreement had provided for possible construction of pipelines on several LIRR rights of way; however, the pipelines were only built on the Bay Ridge and Montauk-Blissville Yard Branches.¹⁵ Therefore, the license was cancelled as to the other branches. Because the LIRR no longer owned the Bay Ridge Branch, the Settlement Agreement stated that the license

¹¹ Wikipedia, *Penn Central Transportation Company*, available at https://en.wikipedia.org/wiki/Penn_Central_Transportation_Company

¹² *Id.*

¹³ Settlement Agreement. PTT was a subsidiary created by the PRR to build the tunnels under the North (Hudson) and East Rivers, connecting Manhattan with New Jersey and Queens, Pennsylvania Station in Manhattan, and related tracks. See https://en.wikipedia.org/wiki/New_York_Tunnel_Extension.

¹⁴ *Id.* See Release of Lease, March 30, 1976, recorded at Kings County, 1978, Reel 1041, Pages 592-594 (copy included in PTT to Conrail transfer documents at pages 11-13/15,) (*see* note 18 below regarding indexing of these documents).

¹⁵ Blissville Yard is in Long Island City. The Montauk-Blissville Yard Branch connects the yard to Fresh Pond Junction, where the Buckeye Pipeline section on that branch connects with the Bay Ridge Branch section of the pipeline.

would be treated as two separate license agreements, one between Buckeye and the LIRR for the Montauk-Blissville Yard Branch, and the other between Buckeye, the Trustees and PTT for the Bay Ridge Branch.¹⁶

Conrail Acquires the Bay Ridge Branch

As a result of the Penn Central bankruptcy and pursuant to the Regional Rail Reorganization Act of 1973, the federal government nationalized the railroad operations of the Penn Central and six other bankrupt railroads, transferring them to the new Consolidated Rail Corporation (Conrail) on April 1, 1976.¹⁷ Included were properties of PTT that were related to railroad operations, including those of the Bay Ridge Branch.¹⁸ Although the pipeline license was not specifically referenced in the document identifying transferred properties of PTT, it did state, generally, that real property was transferred “together with all ... licenses ... belonging to or in any way appertaining to such real property...”¹⁹ Also, later documents assume that the license was transferred, as discussed below.

Conrail Sells the Bay Ridge Branch to the LIRR

On June 29, 1984, the Bay Ridge Branch was transferred again, this time from Conrail to the LIRR.²⁰ However, Conrail retained air rights over parts of the railroad right of way. Nothing specific was said in the recorded real estate sale document about the pipeline license.

¹⁶ *Id.* at § 13. A separate license between Buckeye and the LIRR for a pipeline on the Montauk-Blissville Yard Branch, between Long Island City and Fresh Pond Junction, also was recognized.

¹⁷ *See generally*, The Conveyance Process: A Supplement to the Final Report of the United States Railway Association, Dec. 1986, available at <https://babel.hathitrust.org/cgi/pt?id=mdp.39015018912157&seq=5>

¹⁸ Real Property Identification Document, PTT to Conrail (copy attached). The recordal of this document in the NY City ACRIS system is confusing. To search for documents by Reel and Page number, you need the year of recordal. This document was not correctly recorded until 1978. Typically, documents are indexed by the first page; other pages are not indexed. In this case, most of this document is indexed by its second page, Kings County, 1978, Reel 1041, Page 582. The first page, Reel 1041, Page 581, is grouped with the previous document, indexed at 1978, Reel 1041, Page 577.

¹⁹ *Id.* at p. 1.

²⁰ Indenture recorded at Kings County, Reel 1528, Page 45 (copy attached).

Buckeye License Specifically Assigned by Conrail to LIRR

On the same day as the transfer of the Bay Ridge Branch to the LIRR, Conrail also made an agreement with the LIRR assigning Conrail's rights in all agreements, leases and licenses affecting that property to the LIRR, with certain reservations and exceptions. This assignment specifically referred to and stated that copies of the original 1965 pipeline agreement and the 1976 Settlement Agreement were attached.²¹ The LIRR assigned the compensation under those agreements to Conrail. It also committed not to agree to any amendment of those agreements without the consent of Conrail. Conrail kept the sole right to amend the license agreement with Buckeye regarding its term and compensation.

Most significantly, for this study, this agreement provided that Conrail may agree with Buckeye to shift the cost of moving the pipeline, when requested by the LIRR, from Buckeye to the LIRR. However, if Conrail were to exercise its right to amend the agreement with respect to term or compensation, it would use its best efforts to amend Section 19 of the 1965 agreement to permit LIRR to recover its actual total costs relating to the pipeline. Section 19 includes costs of relocation of the pipeline.

Finally, on November 28, 1995, Conrail and Buckeye agreed to extend the term of the license agreement in perpetuity. That agreement did not mention relocation of the pipeline or LIRR's costs relating to the pipeline.²²

Conclusion

It seems clear from this history that the LIRR retains the right to require Buckeye to relocate its pipeline for railroad operation, unless there is some other agreement or license amendment that has not been provided to me. Also, unless there is another amendment about the cost of relocation, it appears that Buckeye remains responsible for the cost of relocation, even if LIRR requests the relocation. However, because Conrail is—at least in part—in control of negotiating

²¹ *Id.*

²² Conrail – Buckeye Letter Agreement (copy attached).

such an amendment, it is possible that the LIRR could become responsible for part or all of the cost of any pipeline relocation that it might request.

This article expresses the personal views of the author and does not express the views of his employer, or any client or organization. The author has degrees in law and physics, and has taken several engineering courses. After five years of work as an engineer, he has practiced law primarily in the field of patents for over 50 years, dealing with a wide variety of technologies. He is a life-long railfan and user of public transportation in the United States, Europe and Japan.