

"4 Infraco Default" (a)(i) On-Street Trackform Design and Integration – Failure to programme "Deliverables"

1.1 Clause 10 Development, Review and Finalisation of the Deliverables

1.1.1 Clause 10 is a key area of the management and delivery of the Design by Infraco. In particular, it is noted that the Infraco has not complied with all of its obligations under this clause and that those failures have *frustrated* the intended process of tie's ability to formally review and comment on the relevant Deliverables.

1.1.1.1 Clause 10.1: requires the Infraco to develop and finalise the "Deliverables" in accordance with the Programme and the Agreement. This further provides that tie *shall* review the Deliverables (and procure that CEC does so) in accordance with Schedule Part 14. "*Deliverables*" is defined within the Infraco Contract as follows:-

"Deliverables" all documents, information, reports, diagrams, pricing schedules, records, method statements, risk assessments, manuals, schedules, databases, reinforcement details, photographs, formulae, plans, designs, specifications, drawings (including as-built drawings), details, calculations, analysis, operation and maintenance manuals, software, data, data configuration designs, tools and details, software protocols, source and object codes, transport and other models and simulations, the outputs and reports based on any models, programmes and all other material created and/or provided by Infraco (and/or any Infraco Party or any other third party) in relation to the Infraco Works required to deliver the Infraco Works.

1.1.1.2 Clauses 10.5 & 10.6 are key areas where the Infraco appears to have breached its obligations. The result has been that tie's ability to view (via clauses 10.3/10.4) and review the relevant designs, and in particular the SDS detailed designs in respect of the civils works, has been frustrated. The design process is therefore not as transparent as it was intended to be – crucially tie does not know *when* it will be provided with, in this instance, the integrated design for review (or what stage that design is at, at any point in time).

1.1.1.3 Clause 10.5 provides that Infraco shall ensure that "... *the Programme shall set out (and shall continue to set out) the manner and timing of each phase of the development and production of the Deliverables, [and] ... the order in which each Deliverable is to be submitted for review in accordance with the Review Procedure ...*". Clause 10.17 further provides that the timescales and the like shall adhere to the Design Management Plan – Sched. Part 14. In respect of Clause 10.5 we note the following:-

"4 Infraco Default" (a)(i) On-Street Trackform Design and Integration – Failure to programme "Deliverables"

- i) The **"Programme"** is a defined term and means the programme set out in Schedule Part 15 of the Infraco Contract (see separate detail produced in relation to "Key Topic Area 3").
 - ii) The elements of the Programme which are relevant to the matters presently under consideration are the Construction Programme, the Design Delivery Programme and the Consents Programme. **These programmes do not contain details of "...the order in which each Deliverable is to be submitted for review in accordance with the Review Procedure".**
 - iii) An obligation to programme the various stages of the Deliverables is a very onerous requirement (particularly so when considered in light of the wide definition of "Deliverables"). This however is what the Contract requires.
 - iv) The Infraco did submit a programme referred to as **"BSC Design Programme"** on 22 May 2009 (Doc01: letter ref. 25.1.201/KDR/2703¹). In submitting that programme the Infraco noted *"Please note it is ... not a contractual requirement to provide a Design Programme ..."*. That position is contradicted by the provisions of Clause 10.5 (& 10.6) albeit clause 10.5 is wider than relating to solely to 'design'. The Infraco **does** have to include 'Deliverables' in the Programme. We understand that this is the last such programme issued by Infraco - no other (subsequent) **"BSC Design Programme"** has been submitted to tie. **This programme does not contain details of "...the order in which each Deliverable is to be submitted for review in accordance with the Review Procedure".**
- 1.1.1.4 Clause 10.6 provides that **"... the Infraco shall submit ... the draft Deliverable ... no later than the end of the period shown in the Programme for that Deliverable"**. This causes some difficulty in light of the Infraco's failure to comply (fully) with Clause 10.5.
- 1.1.1.5 Clause 10.10 provides *some* guidance to this question inasmuch as it states that **"... where no timescale for provision of such Deliverables is specified in the Programme, such Deliverables shall be provided to tie as soon as reasonably practicable"**.
- 1.1.1.6 It is suggested that Clause 10.10 be read such that the relevant Deliverables are provided for tie's review sufficiently in advance of construction to afford tie and other third parties, incl. CEC, the opportunity to comment on those designs.

¹ See also tie letter ref. INF CORR 1595 dated 5 June 2009 (Doc02) and Infraco letter ref. 25.1.201/SN/2841 dated 12 June 2009 (Doc03) for further background. Despite the Infraco's statement in Doc03 that they comply with the Infraco Contract – its programme data does not comply with Clause 10 of the Contract.

Our ref: **25.1.201/KDR/2703**
Your ref:

22 May 2009

tie limited
CityPoint
65 Haymarket Terrace
Edinburgh
EH12 5HD

Bilfinger Berger Civil-EDI			
Date Sent		BIW	
File Number	25 MAY 2009		
Action			
Distribution			

Bilfinger Berger-Siemens- CAF Consortium

BSC Consortium Office
9 Lochside Avenue
Edinburgh Park
Edinburgh
EH12 9DJ
United Kingdom

Phone: +44 (0) [REDACTED]

For the attention of Steven Bell – Tram Project Director

Dear Sirs,

**Edinburgh Tram Network Infraco
BSC Design Programme**

As requested at a recent Design Progress Meeting and further to discussions between your Mr. Steven Bell and our Mr. Martin Foerder, please find enclosed the BSC Design Programme for your information. This is based on Programme Revision 2 submitted to tie under cover of our letter reference 25.1.201/KDR/2680 dated 20 May 2009. The baseline date of the Design Programme is 31 March 2009.

Please note it is a not a contractual requirement to provide a Design Programme; however, we provide a copy for your information to demonstrate how we are managing the design integration process.

Yours faithfully,

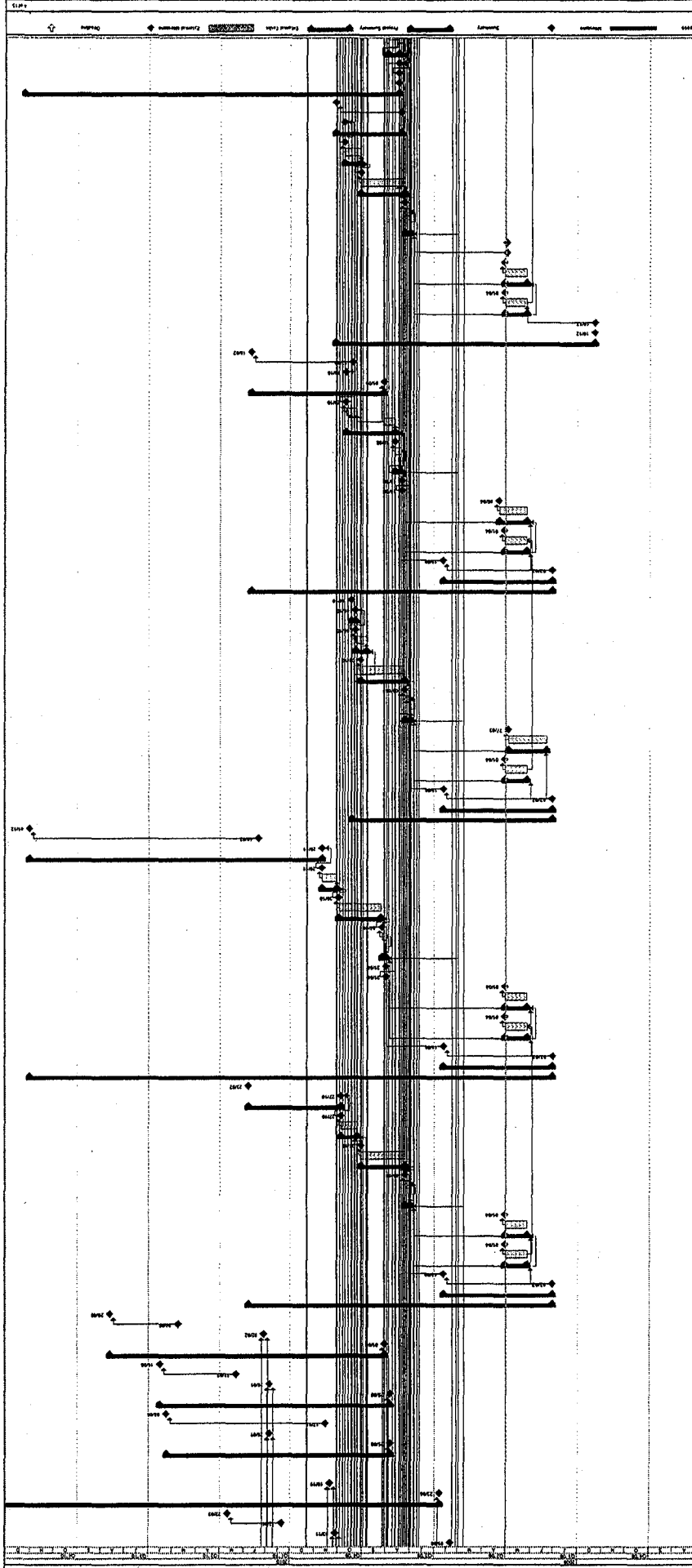
[REDACTED]
Martin Foerder
Project Director
Bilfinger Berger Siemens CAF Consortium

Cc SRO, KRu, CBr, JDo, JCo, Miguel Berrozpe (Siemens), Alejandro Urriza (CAF)

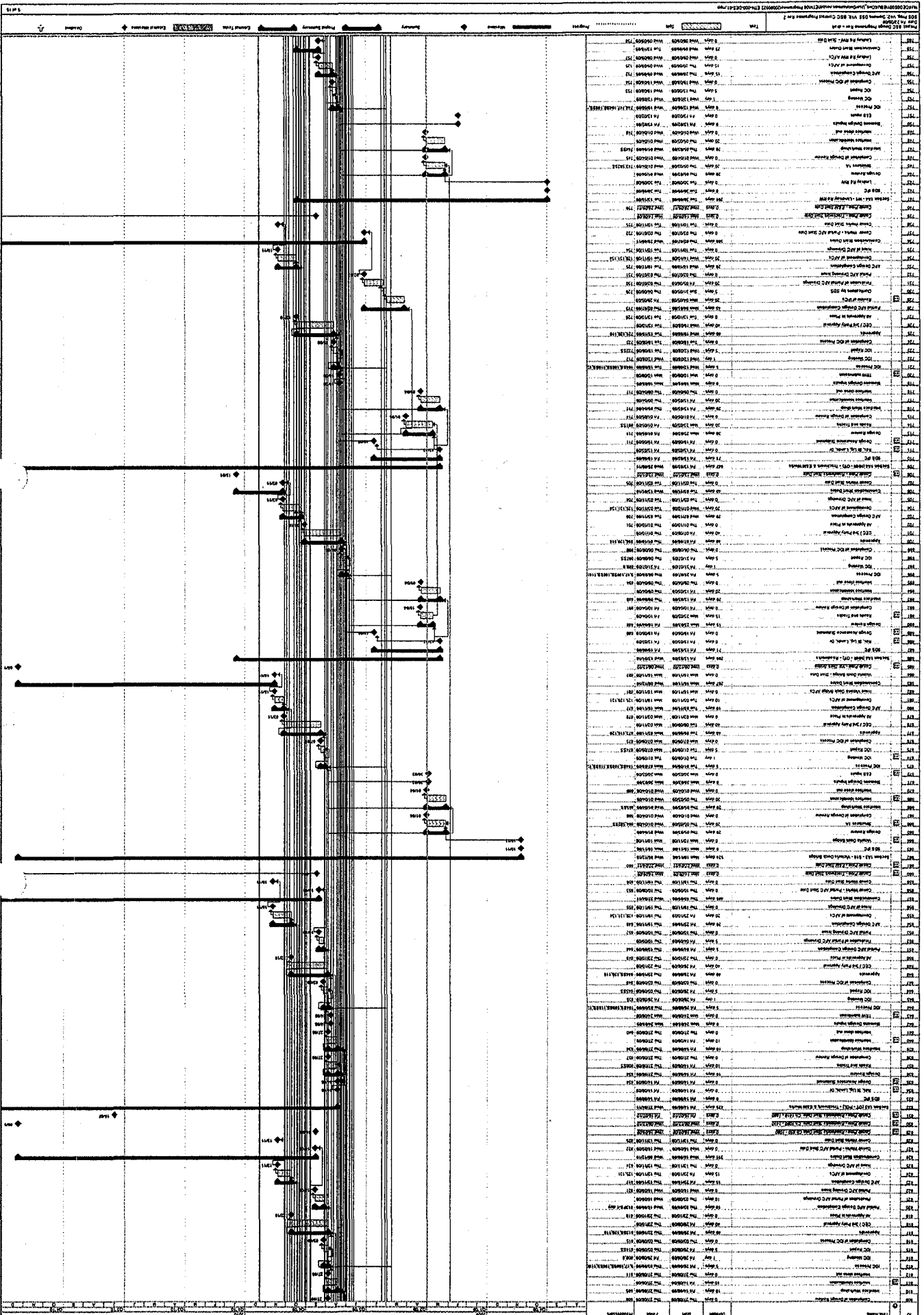
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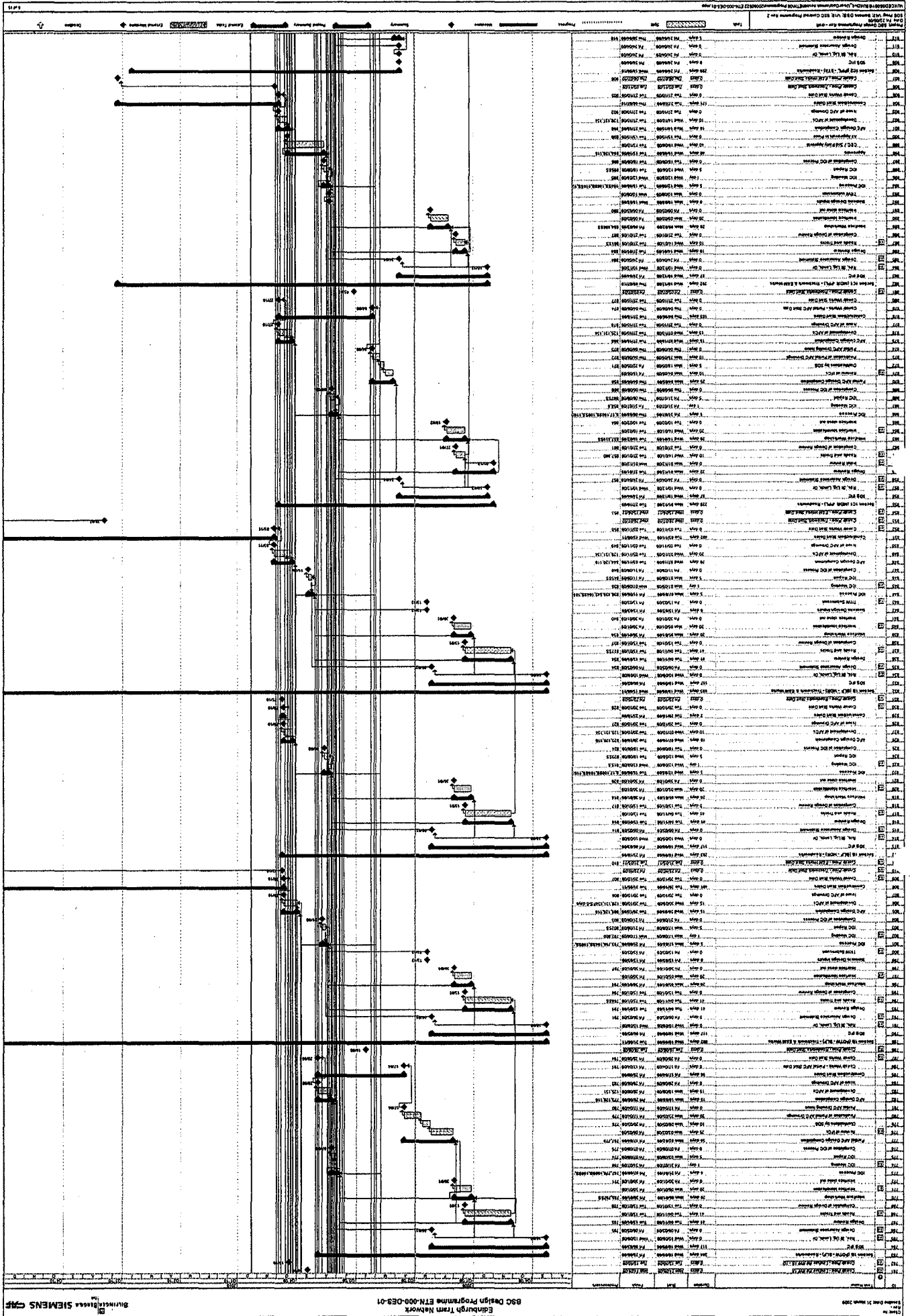
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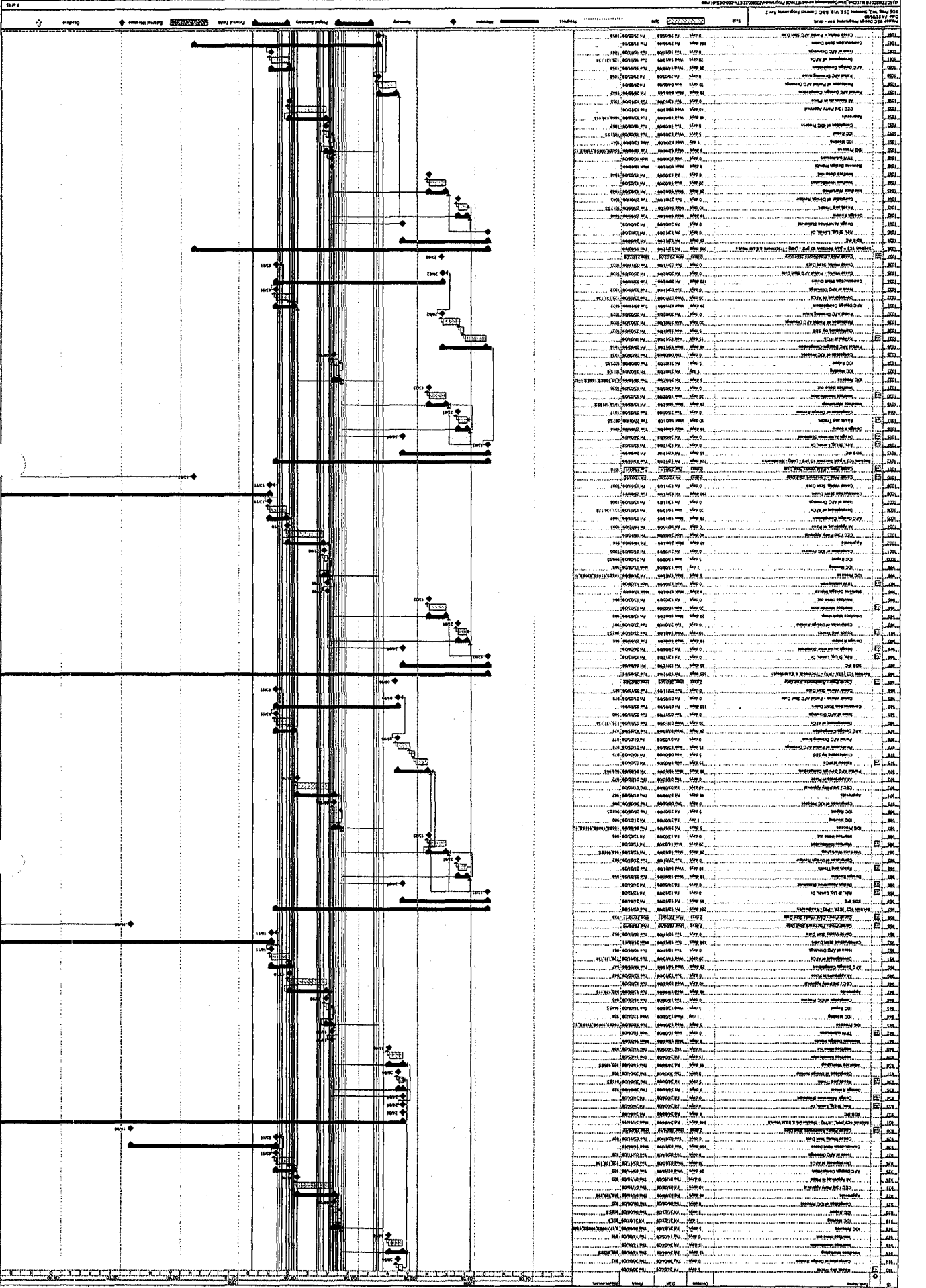
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307	BA3 Work Item	48 days	Tue 14/08/06	Tue 13/09/06	
308	BA4 Work Item	48 days	Tue 14/08/06	Tue 13/09/06	
309	BA5 Work Item	48 days	Tue 14/08/06	Tue 13/09/06	
310	BA6 Work Item	48 days	Tue 14/08/06	Tue 13/09/06	
311	BA7 Work Item	48 days	Tue 14/08/06	Tue 13/09/06	
312	BA8 Work Item	48 days	Tue 14/08/06	Tue 13/09/06	
313	BA9 Work Item	48 days	Tue 14/08/06	Tue 13/09/06	
314	BA10 Work Item	48 days	Tue 14/08/06	Tue 13/09/06	
315	BA11 Work Item	48 days	Tue 14/08/06	Tue 13/09/06	
316	BA12 Work Item	48 days	Tue 14/08/06	Tue 13/09/06	
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401	BA97 Work Item	48 days	Tue 14/08/06	Tue 13/09/06	
402	BA98 Work Item	48 days	Tue 14/08/06	Tue 13/09/06	
403	BA99 Work Item	48 days	Tue 14/08/06	Tue 13/09/06	
404	BA100 Work Item	48 days	Tue 14/08/06	Tue 13/09/06	



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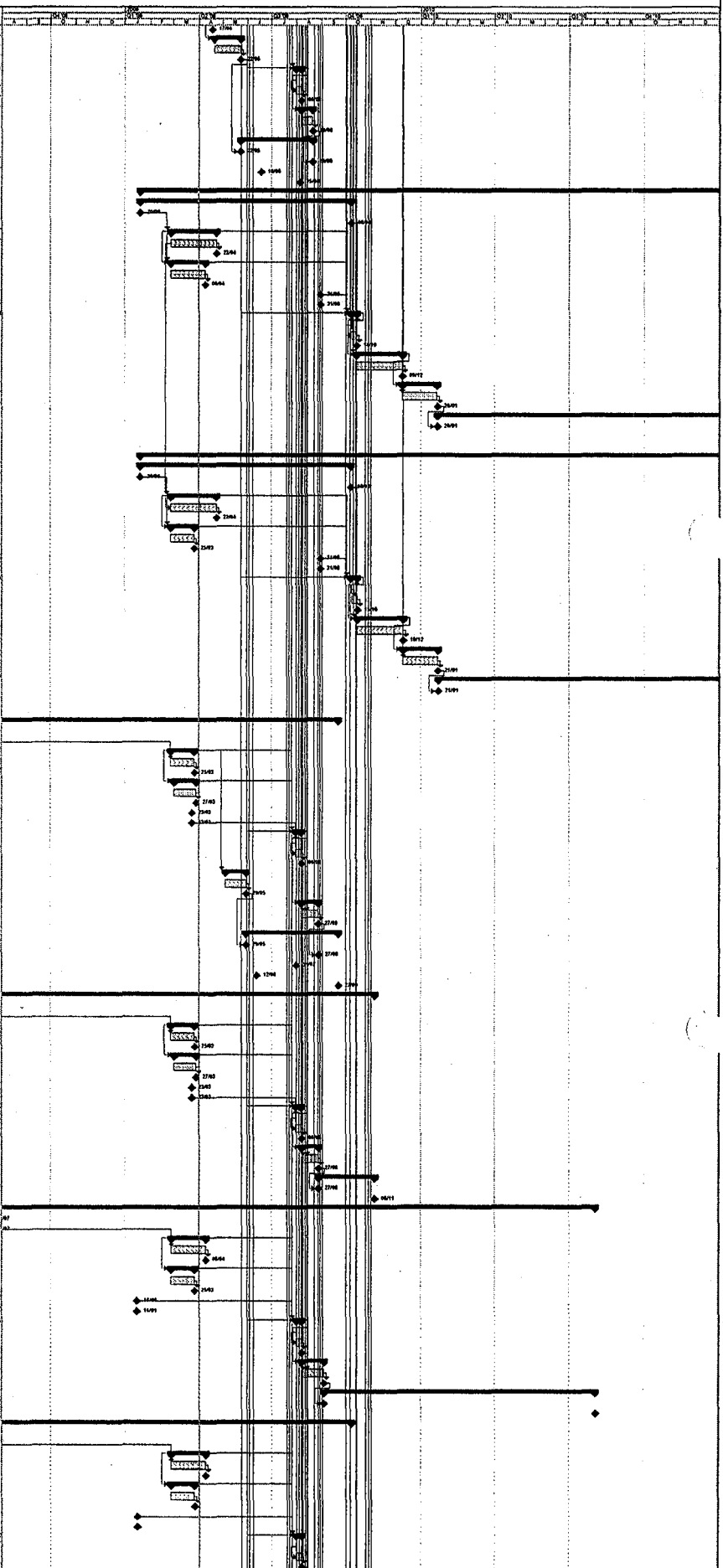


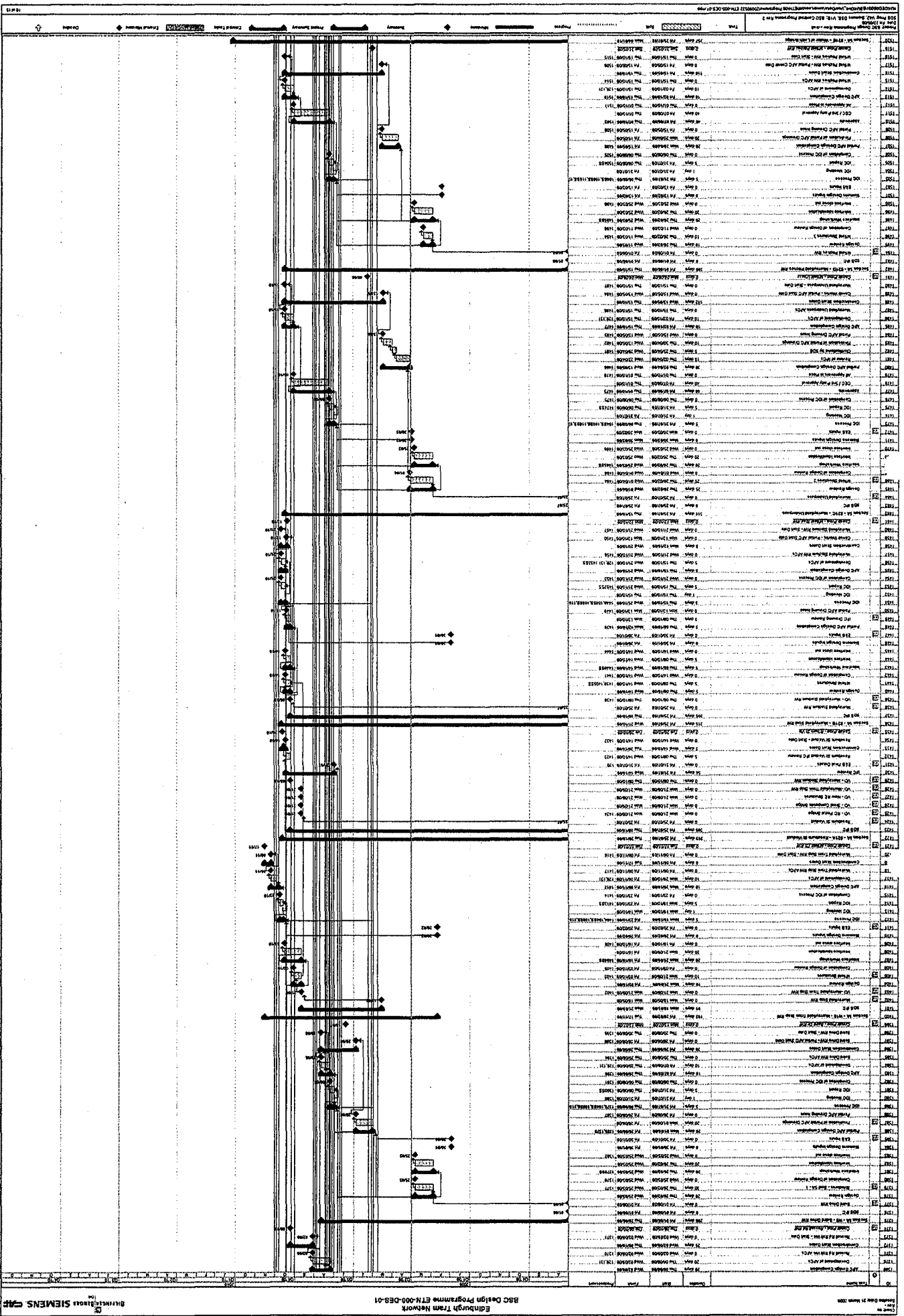


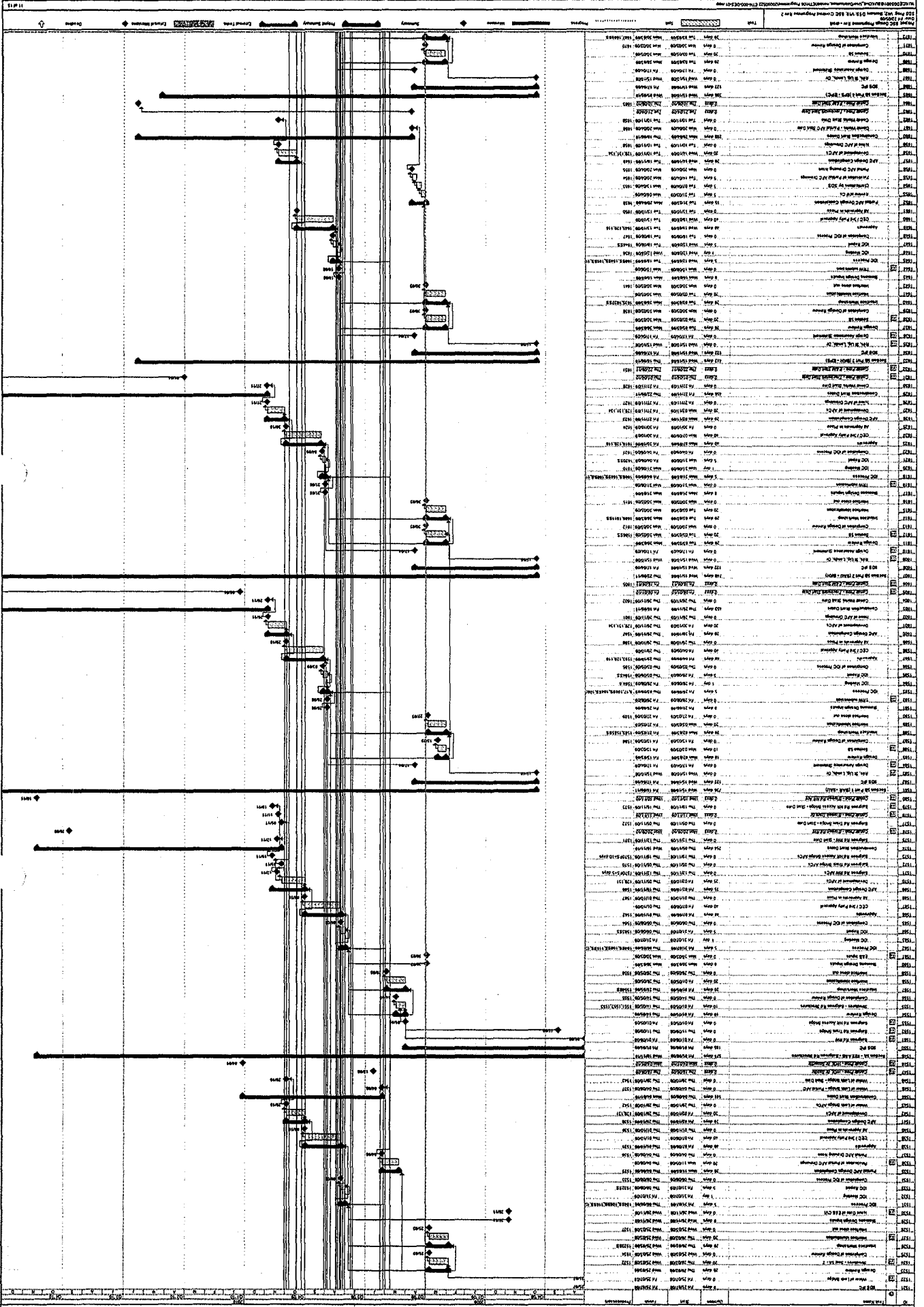


Item No.	Description	Quantity	Unit	Material Code	Remarks
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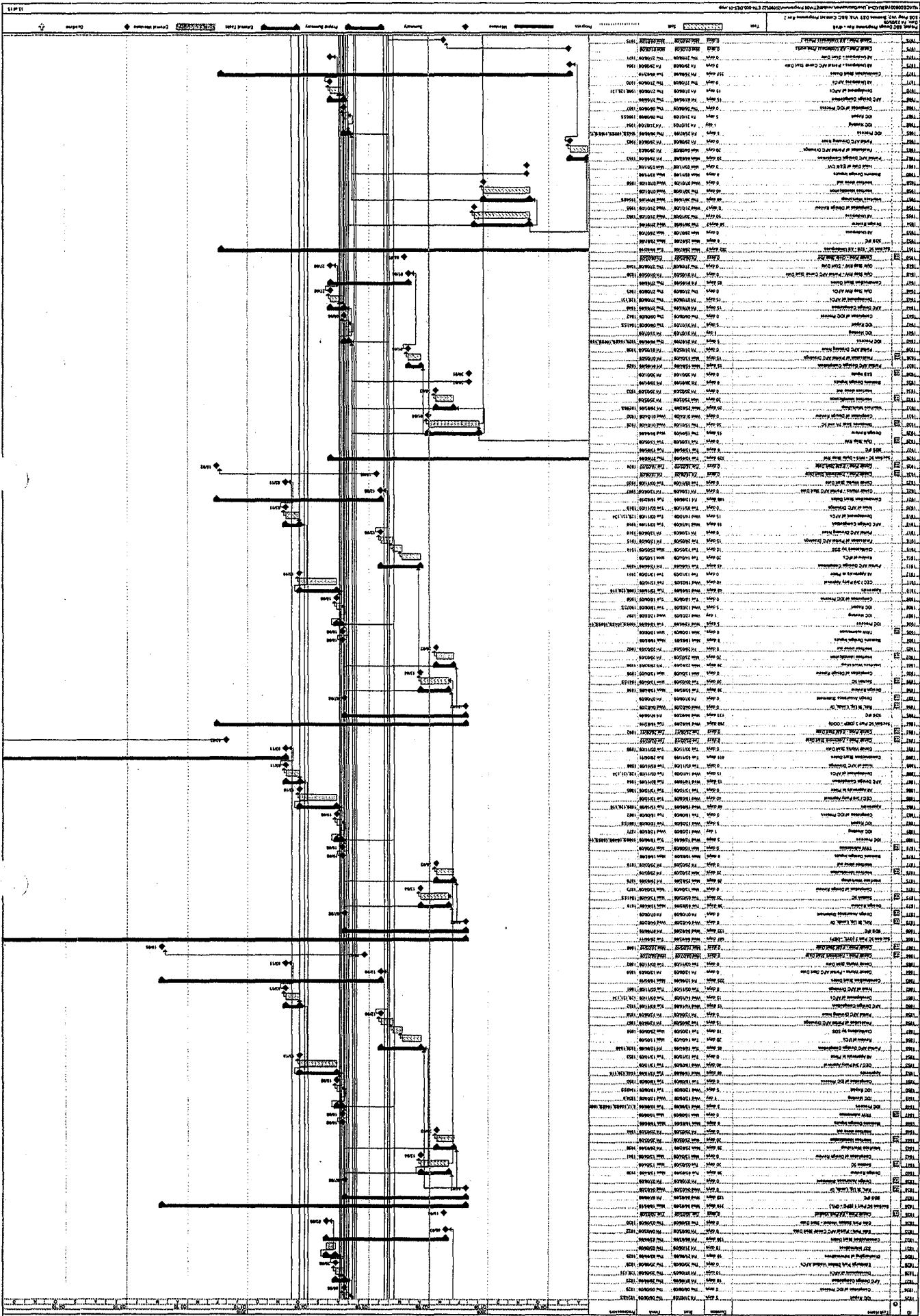
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7103	Development of Panel APC	25 days	Mon 23/03/09	Fa 18/04/09	7099, 7101
7104	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7103
7105	IOC Process	5 days	Fa 22/03/09	Fa 26/03/09	7104
7106	IOC Meeting	1 day	Fa 23/03/09	Fa 23/03/09	7105
7107	Completion of IOC Process	4 days	Tu 24/03/09	Tu 30/03/09	7106
7108	APC Design Completion	15 days	Fa 22/03/09	Tu 07/04/09	7104, 7105
7109	Development of APC	15 days	Fa 22/03/09	Tu 07/04/09	7104, 7105
7110	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7109
7111	Construction of BSC Panels	15 days	Tu 27/03/09	Tu 07/04/09	7110, 7112
7112	Power of DC Design Completion	25 days	Mon 23/03/09	Fa 18/04/09	7111, 7113
7113	Development of Panel APC	25 days	Mon 23/03/09	Fa 18/04/09	7111, 7114
7114	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7113
7115	IOC Process	5 days	Fa 22/03/09	Fa 26/03/09	7114
7116	IOC Meeting	1 day	Fa 23/03/09	Fa 23/03/09	7115
7117	Completion of IOC Process	4 days	Tu 24/03/09	Tu 30/03/09	7116
7118	APC Design Completion	15 days	Fa 22/03/09	Tu 07/04/09	7114, 7115
7119	Development of APC	15 days	Fa 22/03/09	Tu 07/04/09	7114, 7115
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7121	Construction of BSC Panels	15 days	Tu 27/03/09	Tu 07/04/09	7120, 7122
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7123	Development of Panel APC	25 days	Mon 23/03/09	Fa 18/04/09	7121, 7124
7124	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7123
7125	IOC Process	5 days	Fa 22/03/09	Fa 26/03/09	7124
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7127	Completion of IOC Process	4 days	Tu 24/03/09	Tu 30/03/09	7126
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7129	Development of APC	15 days	Fa 22/03/09	Tu 07/04/09	7124, 7125
7130	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7129
7131	Construction of BSC Panels	15 days	Tu 27/03/09	Tu 07/04/09	7130, 7132
7132	Power of DC Design Completion	25 days	Mon 23/03/09	Fa 18/04/09	7131, 7133
7133	Development of Panel APC	25 days	Mon 23/03/09	Fa 18/04/09	7131, 7134
7134	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7133
7135	IOC Process	5 days	Fa 22/03/09	Fa 26/03/09	7134
7136	IOC Meeting	1 day	Fa 23/03/09	Fa 23/03/09	7135
7137	Completion of IOC Process	4 days	Tu 24/03/09	Tu 30/03/09	7136
7138	APC Design Completion	15 days	Fa 22/03/09	Tu 07/04/09	7134, 7135
7139	Development of APC	15 days	Fa 22/03/09	Tu 07/04/09	7134, 7135
7140	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7139
7141	Construction of BSC Panels	15 days	Tu 27/03/09	Tu 07/04/09	7140, 7142
7142	Power of DC Design Completion	25 days	Mon 23/03/09	Fa 18/04/09	7141, 7143
7143	Development of Panel APC	25 days	Mon 23/03/09	Fa 18/04/09	7141, 7144
7144	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7143
7145	IOC Process	5 days	Fa 22/03/09	Fa 26/03/09	7144
7146	IOC Meeting	1 day	Fa 23/03/09	Fa 23/03/09	7145
7147	Completion of IOC Process	4 days	Tu 24/03/09	Tu 30/03/09	7146
7148	APC Design Completion	15 days	Fa 22/03/09	Tu 07/04/09	7144, 7145
7149	Development of APC	15 days	Fa 22/03/09	Tu 07/04/09	7144, 7145
7150	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7149
7151	Construction of BSC Panels	15 days	Tu 27/03/09	Tu 07/04/09	7150, 7152
7152	Power of DC Design Completion	25 days	Mon 23/03/09	Fa 18/04/09	7151, 7153
7153	Development of Panel APC	25 days	Mon 23/03/09	Fa 18/04/09	7151, 7154
7154	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7153
7155	IOC Process	5 days	Fa 22/03/09	Fa 26/03/09	7154
7156	IOC Meeting	1 day	Fa 23/03/09	Fa 23/03/09	7155
7157	Completion of IOC Process	4 days	Tu 24/03/09	Tu 30/03/09	7156
7158	APC Design Completion	15 days	Fa 22/03/09	Tu 07/04/09	7154, 7155
7159	Development of APC	15 days	Fa 22/03/09	Tu 07/04/09	7154, 7155
7160	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7159
7161	Construction of BSC Panels	15 days	Tu 27/03/09	Tu 07/04/09	7160, 7162
7162	Power of DC Design Completion	25 days	Mon 23/03/09	Fa 18/04/09	7161, 7163
7163	Development of Panel APC	25 days	Mon 23/03/09	Fa 18/04/09	7161, 7164
7164	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7163
7165	IOC Process	5 days	Fa 22/03/09	Fa 26/03/09	7164
7166	IOC Meeting	1 day	Fa 23/03/09	Fa 23/03/09	7165
7167	Completion of IOC Process	4 days	Tu 24/03/09	Tu 30/03/09	7166
7168	APC Design Completion	15 days	Fa 22/03/09	Tu 07/04/09	7164, 7165
7169	Development of APC	15 days	Fa 22/03/09	Tu 07/04/09	7164, 7165
7170	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7169
7171	Construction of BSC Panels	15 days	Tu 27/03/09	Tu 07/04/09	7170, 7172
7172	Power of DC Design Completion	25 days	Mon 23/03/09	Fa 18/04/09	7171, 7173
7173	Development of Panel APC	25 days	Mon 23/03/09	Fa 18/04/09	7171, 7174
7174	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7173
7175	IOC Process	5 days	Fa 22/03/09	Fa 26/03/09	7174
7176	IOC Meeting	1 day	Fa 23/03/09	Fa 23/03/09	7175
7177	Completion of IOC Process	4 days	Tu 24/03/09	Tu 30/03/09	7176
7178	APC Design Completion	15 days	Fa 22/03/09	Tu 07/04/09	7174, 7175
7179	Development of APC	15 days	Fa 22/03/09	Tu 07/04/09	7174, 7175
7180	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7179
7181	Construction of BSC Panels	15 days	Tu 27/03/09	Tu 07/04/09	7180, 7182
7182	Power of DC Design Completion	25 days	Mon 23/03/09	Fa 18/04/09	7181, 7183
7183	Development of Panel APC	25 days	Mon 23/03/09	Fa 18/04/09	7181, 7184
7184	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7183
7185	IOC Process	5 days	Fa 22/03/09	Fa 26/03/09	7184
7186	IOC Meeting	1 day	Fa 23/03/09	Fa 23/03/09	7185
7187	Completion of IOC Process	4 days	Tu 24/03/09	Tu 30/03/09	7186
7188	APC Design Completion	15 days	Fa 22/03/09	Tu 07/04/09	7184, 7185
7189	Development of APC	15 days	Fa 22/03/09	Tu 07/04/09	7184, 7185
7190	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7189
7191	Construction of BSC Panels	15 days	Tu 27/03/09	Tu 07/04/09	7190, 7192
7192	Power of DC Design Completion	25 days	Mon 23/03/09	Fa 18/04/09	7191, 7193
7193	Development of Panel APC	25 days	Mon 23/03/09	Fa 18/04/09	7191, 7194
7194	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7193
7195	IOC Process	5 days	Fa 22/03/09	Fa 26/03/09	7194
7196	IOC Meeting	1 day	Fa 23/03/09	Fa 23/03/09	7195
7197	Completion of IOC Process	4 days	Tu 24/03/09	Tu 30/03/09	7196
7198	APC Design Completion	15 days	Fa 22/03/09	Tu 07/04/09	7194, 7195
7199	Development of APC	15 days	Fa 22/03/09	Tu 07/04/09	7194, 7195
7200	Hardware Design of Panel APC	5 days	Fa 22/03/09	Fa 26/03/09	7199

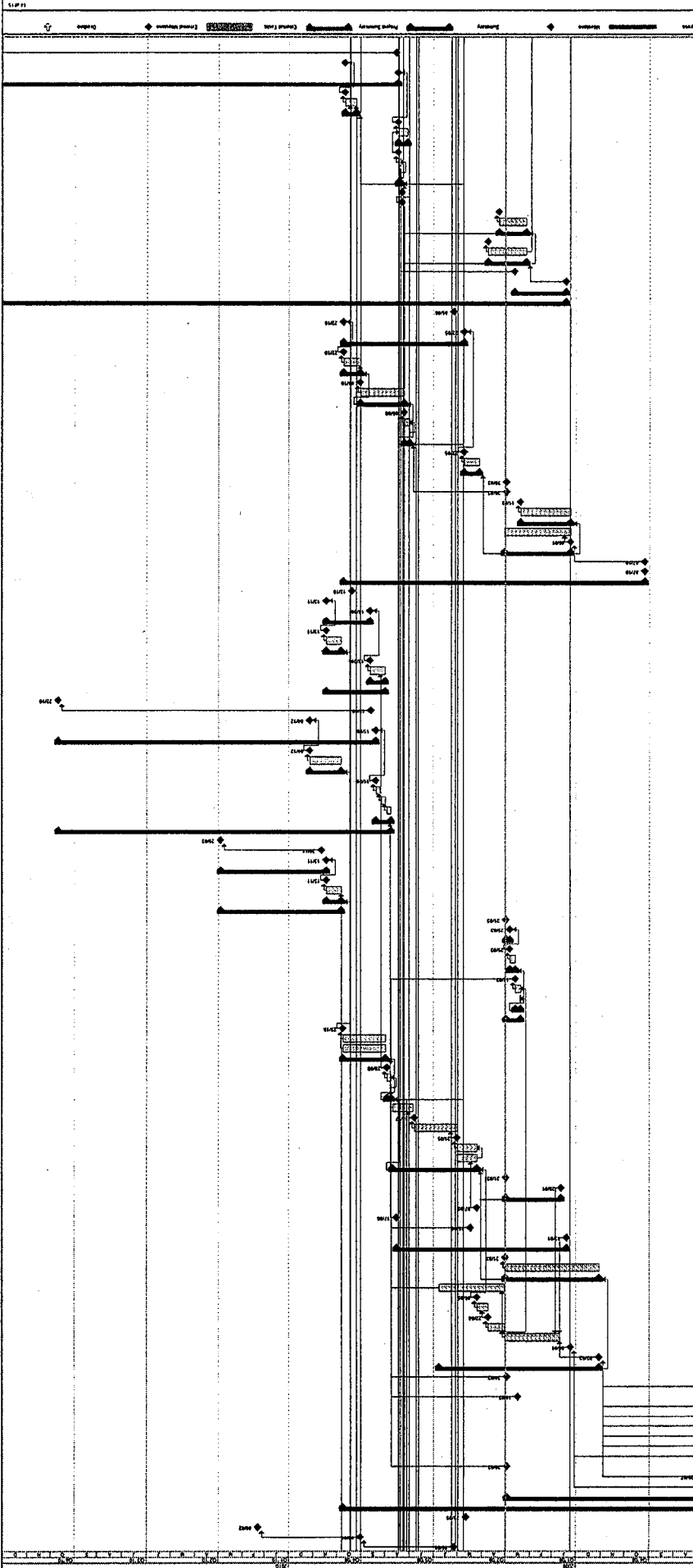




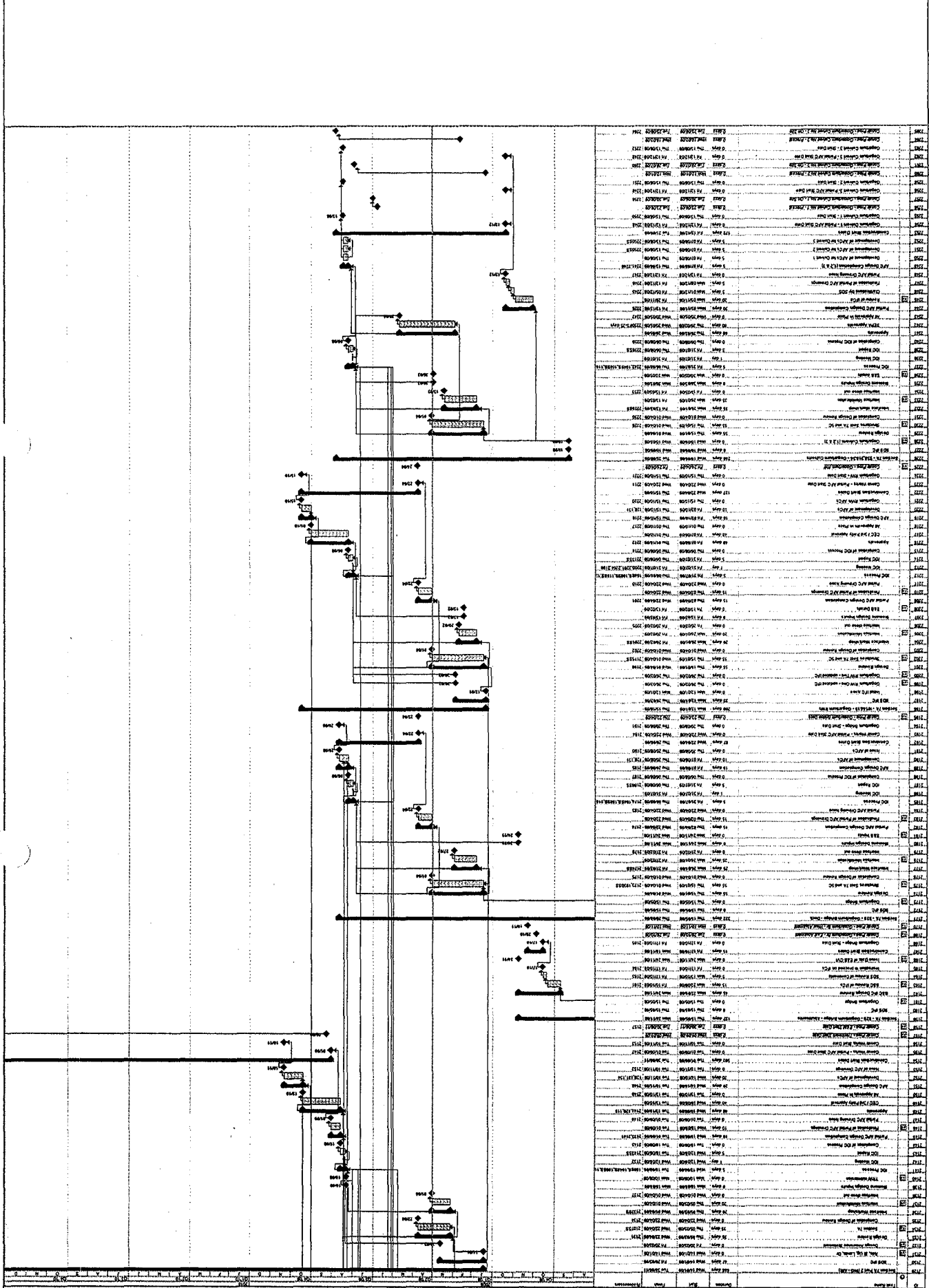


Item No.	Description	Quantity	Unit	Material Code
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ID	Component Name	Quantity	Unit	Notes
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Privileged and confidential – prepared in contemplation of mediation
FOISA exempt

For the attention of Martin Foerder
Project Director
Bilfinger Berger Siemens CAF Consortium
9 Lochside Avenue
Edinburgh EH12 9DJ

Our Ref: INF CORR 1595/
SB

Date: 5th June 2009

Dear Sirs

**Edinburgh Tram Network Infraco
BSC Design Programme**

We refer to your letter ref 25.1.KDR.2703 and acknowledge receipt of the BSC Design programme contained therein.

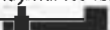
We note your statement on the provision of a Design Programme. We would however remind you that Schedule 14, part C – Design Management Plan, Clause 2.4 does require Infraco to submit packages of design to tie to an agreed programme.


Please confirm that whether the received programme is issued for tie agreement in this respect.

Yours faithfully


Steven Bell
Project Director – Edinburgh Tram

tie limited

Citypoint 65 Haymarket Terrace Edinburgh EH1 2 5HD
tel: +44(0)131  fax +44(0)131 622 8301 web www.tie.ltd.uk
Registered in Scotland No: 230949 at City Chambers, High Street, Edinburgh EH1 1YJ

Direct dial: +44 (0)131 
e-mail: steven.bell@tie.ltd.uk
web: www.tie.ltd.uk

CEC02084549_0019

Our ref: 25.1.201/SN/2841
Your ref: INF CORR 1595/SB

12 June 2009

tie limited
CityPoint
65 Haymarket Terrace
Edinburgh
EH12 5HD

Bilfinger Berger Civil-EDI	
Date Sent	12 JUN 2009 BJW
File Number	
Action	
Distribution	

Bilfinger Berger-Siemens- CAF Consortium

BSC Consortium Office
9 Lochside Avenue
Edinburgh Park
Edinburgh
EH12 9DJ
United Kingdom

Phone: +44 (0) 131 [REDACTED]

For the attention of Steven Bell – Tram Project Director

Dear Sirs,

**Edinburgh Tram Network Infraco
BSC Design Programme**

We refer to your letter reference INF CORR 1595/SB dated 5 June 2009 and received on 5 June 2009.

We confirm that the BSC Design Programme issued under letter reference 25.1.201/KDR/2703 was issued to tie for information to demonstrate how we are managing the Design Integration Process. This was not issued in line with Clause 2.4 of Schedule 14 Part C.

BSC comply with Schedule 14 Part C, Clause 2.4 through provision of the SDS Design Programme and the Siemens Submission Schedule. These documents are updated and submitted to tie on a monthly basis and provide dates for submission of packages of design to tie.

Yours faithfully,

[REDACTED]
M Foerder
Project Director
Bilfinger Berger Siemens CAF Consortium

cc: KRu, SRo, CBr, JCo, SSh, Miguel Berrozpe (Siemens)

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FOISA exempt