

26th April, 2017
CREG/MUM/MERC/2017/77

To,
Secretary,
Maharashtra Electricity Regulatory Commission,
13th Floor, Centre No 1, World Trade Centre
Cuffe Parade, Colaba, Mumbai 400 005.

MAHARASHTRA ELECTRICITY
REGULATORY COMMISSION
WTC, COLABA, MUMBAI - 400 005.

Dear Sir,

**Sub: Transmission Licence Amendment Application of Tata Power-T in Case No. 137 of 2016 -
Response to Queries raised during Technical Validation Session**

- Ref: 1. MYT Order in Case no. 22 of 2016 of Tata Power-T dated 30th June, 2016
2. Submission of Transmission Licence Amendment Application to Hon'ble Commission vide letter reference MERC/MUM/2016/267 dated 10th October, 2016
3. Response to Data Gaps vide letter CREG/MUM/MERC/2017/32 dated 8th February, 2017
4. TVS held on 9th February, 2017

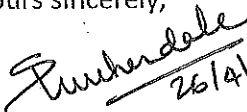
This has reference to the Technical Validation Session (TVS) held on 9th February, 2017 with reference to the Transmission Licence Amendment Application of Tata Power-T in Case No. 137 of 2016.

We are in the **Appendix**, enclosing our response to the queries raised.

We trust the same is in order and request the Hon'ble Commission to take the submission on record.

Thanking you,

Yours sincerely,


26/4/17.
Swati Mehendale
Head Regulatory (Western Region)

Encl: Appendix

TATA POWER

The Tata Power Company Limited

Backbay Receiving Station, Regulation Department 148 Lt Gen J Bhonsale Marg

Nariman Point Mumbai - 400 021 Tel 91 22 6717 2903

Registered Office Bombay House 24 Homi Mody Street Mumbai 400 001

CIN : L28920MH1919PLC000567

Website : www.tatapower Email : tatapower@tatapower.com

Appendix

Transmission Licence Amendment Application of Tata Power-T in Case No. 137 of 2016**Response to Queries raised during TVS dated 9th February, 2017**

1. This has reference to the Petition filed in Case No. 137 of 2016 seeking amendment to the Transmission Licence No. 1 of 2014 granted by the Hon'ble Commission to the Transmission Business of Tata Power (Tata Power - T).
2. The Technical Validation Session in this matter was conducted on 9th February, 2017. During the said hearing, the Hon'ble Commission had raised certain queries. We are submitting our response to these queries as follows:

Query**1. To submit the following:**

a.) Single Line Diagram for the proposed amendments in Transmission Lines

b.) Sub-station Single Line Diagrams where amendments in Bays are proposed

Response

In this regard, we wish to submit that during the TVS session, the Hon'ble Commission has also directed the State Transmission Utility (STU) to authenticate the claims of Tata Power - T for the revised number of Bays. The para in the minutes of the meeting of TVS session as depicted below -

....

5. STU stated that, as far as minor changes proposed by TPC-T are concerned, it has no comments to offer. However, regarding major changes, it would require additional two weeks time to submit comments. The Commission observed that due diligence on the

part of STU is necessary while examining such proposals and offering comments. In the present case, STU would require to authenticate the claims of TPC-T for the revised number of Bays. STU stated that it would provide its comments on TPC-T's Application for amendment of Transmission Licence within two weeks.

Considering the directions of the Hon'ble Commission given to both Tata Power-T and STU, Tata Power-T had a meeting with STU at Office of MSETCL, Prakashganga to discuss way forward on 17th February, 2017. We are attaching the draft MoM shared with STU for their concurrence as **Annexure 1** to this submission.

As per the discussions held with STU on 17th February, 2017, Tata Power-T has provided the Sub-station Single Line Diagrams for all its Transmission Receiving Stations vide letter dated 8th March, 2017 to STU. We are attaching copy of this letter as **Annexure 2** to this submission.

In the process of finalisation of the Single Line Diagrams of the Transmission Receiving Stations, we have identified certain discrepancies in the count of bays which we have re-submitted to STU for their verification and further submission to MERC vide letter dated 11th April, 2017. We are attaching copy of this letter as **Annexure 3** to this submission.

We are enclosing the Single Line Diagrams for the proposed amendments in Transmission Lines and Sub-station Single Line Diagrams where amendments in Bays are proposed as submitted to STU by letter dated 11th April, 2017 as **Annexure 4** for reference of the Hon'ble Commission.

Query**2. Revised summary of amendments in tabular format****Response**

We are enclosing the revised summary of amendments in tabular format as **Annexure 5** to this submission as per the requirements of the Hon'ble Commission. We request the Hon'ble Commission to consider the revised submission for the amendment of Transmission Licence.

Query**3. Hon'ble APTEL's judgments to substantiate that 110kV Trombay HPCL feeders require deletion from the Transmission Licence****Response**

In this regard, we wish to submit the following:

M/s Hindustan Petroleum Corporation Limited (HPCL) is a consumer of Tata Power-D and a part of distribution system of Tata Power. Tata Power's view is that in view of various provisions of the 2003 Act, the concerned line is a part of its distribution system.

The Hon'ble APTEL vide its judgments in Appeal No. 30 of 2012 and Appeal No. 171 & 187 of 2010 have given their views and upheld the position that a line connecting the consumer's premises (HPCL herein) and the transmission network of a Transmission Licensee (Tata Power-T herein) or a generating station is part of the distribution network of Distribution Licensee (Tata Power-D herein). Relevant extracts of these judgments are reproduced herein below for ease of reference:

Judgment in Appeal No. 30 of 2012 dated 14th December, 2012

One of the issues before the Hon'ble Tribunal in this appeal was relating to status of a 132 kV line between a substation of the transmission licensee of Odissa (OPTCL) and an EHV consumer. The line was constructed by the consumer at his cost. While the transmission licensee OPTCL contended that the in question was part of distribution system, consumer (respondent) argued

that the line was a transmission line. The Hon'ble Tribunal framed issues at para 11 of its judgment. Relevant extracts of the judgments are extracted below:

“ 11 Based on the rival contentions of the parties, the following questions would arise for our consideration:

- I. Whether the Commission has power to enlarge the scope of the Review Petition filed by the Appellant and giving the directions with regard to issues which were not the subject matter of the Review Petition?*
- II. Whether any of the directions given in the Impugned Review Order are not related to subject matter of the Review Petition?*
- III. Whether line connecting the transmission network of the Appellant and the consumer's premises (herein after referred to as last mile connection) is part of transmission network or distribution network of distribution licensee?*
- IV. Whether the scheme for sharing of service line expenditure on remunerative principles for distribution can be applied to the Appellant mutatis mutandis?*
- V. Whether the Commission has rightly fixed the supervision charges at 6% instead of 16% which had been collected by the Appellant?*
- VI. Whether the Commission has rightly denied the Appellant to collect the “Infrastructure Loan” from prospective EHT consumers?*

....

31. The third question for consideration is as to whether the line connecting the transmission network of the Appellant and the consumer's premises (last mile connection) is part of transmission network of the Transmission Licensee or part of the distribution network of Distribution Licensee?

...

34. The learned Counsel for the Appellant has relied upon the definition of distribution network defined in Section 2(19) read with Rule 4 of Electricity Rules 2005.

“Section 2 (19) “distribution system” means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;

Electricity Rules 2005

Rule 4. Distribution System - *The distribution system of a distribution licensee in terms of sub-section (19) of Section 2 of the Act shall also include electric line, sub-station and electrical plant that are primarily maintained for the purpose of distributing electricity in the area of supply of such distribution licensee notwithstanding that such line, sub-station or electrical plant are high pressure cables or overhead lines or associated with such high pressure cables or overhead lines; or used incidentally for the purposes of transmitting electricity for others*

35. According to these provisions the Distribution network is a system of wires between delivery point on the transmission lines or generating station and point of connection to the consumer’s installation. It also includes the electric line, sub-station and electric plant that are primarily maintained for the purpose of distributing electricity notwithstanding that such line... is high pressure cables or overhead lines. We have to examine as to whether an EHT line emanating from an EHT substation of the transmission licensee and connects a consumer’s installation fits in to this definition of distribution network or not. Evidently, the last mile connection is a line is between delivery point on the transmission line and point of connection on the consumer’s premises and is primarily used for distribution of electricity to such consumer. Therefore, it qualifies to be part of distribution network.

36. The learned Counsel for the Respondent no.10 contended that any EHT line connecting generating station and substation directly or through other sub-stations is a transmission line. Every EHT consumer would necessarily have a substation within its premises. Therefore, an EHT line from a substation owned by transmission licensee to consumer’s substation would qualify to be a transmission line within the meaning of transmission line defined by Section 2(72) read with definition of sub-station defined in Section 2(69) of the Act. These subsections are quoted below:

(69) “ sub-station” means a station for transforming or converting electricity for the transmission or distribution thereof and includes transformers, converters, switchgears, capacitors, synchronous condensers, structures, cable and other appurtenant equipment and any buildings used for that purpose and the site thereof;

(72) “Transmission lines” means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) **transmitting electricity**

37. Bare reading Section 2(72) would indicate that the definition of transmission line a residual definition. All high pressure cables and overhead lines which are not essential part of distribution system of a licensee are transmissions lines. Therefore, we have to examine as to whether a line in question is a part of distribution network or not. If it is not a part of distribution network, only then it could be transmission line. As we have observed in para 35 above that last mile connection is part of distribution network, therefore, it cannot be a transmission line.

38. Next requirement for a line to be a transmission line is that the line must be transmitting electricity. Can supply to consumer be treated as transmission of electricity? The answer is ‘no’. Supply of electricity to a consumer is universal service obligation casted upon distribution licensee under section 43 of the Act and accordingly, supply to a consumer is distribution and cannot be termed as transmission of electricity.

39. Next requirement is that it must be connected with a generating station or a substation. According to the learned Counsel for the Respondent, every EHT consumer would necessarily have a substation. Substation has been defined in Section 2(69) as a station for transforming electricity for transmission or distribution thereof. Can an arrangement for stepping down electricity at consumer’s installations be held as substation as defined in Section 2(69) of the Act? Does this arrangement meant for transmission or distribution of electricity? The answer would again be ‘no’. No person can transmit or distribute electricity without a license under the Act. Therefore, the arrangement of stepping down electricity for consumer’s own use cannot be held to be a substation as defined in the Act.

40. The learned Counsel for the Respondent no. 10 further contended that as per Section 39 of the Act, the Appellant, being a STU, is obliged to ensure development of efficient intra-

state transmission system for smooth flow of electricity from generating stations to load centres. A consumer premises has been held to be a load centre by this Tribunal in Appeal No. 139 & 140 of 2007 in the case of Nalwa Steel and Power Limited. The above contention is wholly misplaced and is liable to be rejected for the following reasons:

a) The judgment in Nalwa Steel and Power case had been rendered in the context of Dedicated Transmission Line constructed by a Captive Generating Plant and has no application in the facts of the present case. The issue in that case was as to whether a dedicated transmission line emanating from a captive generating plant terminates at two points.

b) The Act defines a consumer as a person who is supplied with electricity for his own use by a licensee and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee. It does not differentiate between persons on the basis of the quantum of electricity requirement. A person requiring hundreds of MW or a fraction of kW of electricity (BPL consumer) is a consumer under the Act. If premises of an EHT consumer can qualify to be a load centre under section 39 of the Act, the same would be true for a BPL consumer. Can we hold that the STU is obligated to ensure smooth flow of electricity up to premises of a BPL consumer? If so, what is the need of a distribution licensee? It is the duty of a distribution licensee to develop, operate and maintain distribution system to meet universal service obligation casted upon it under Section 43 of the Act.

c) Section 38 of the Act casts the same duties on CTU as Section 39 casts on STU i.e. to ensure development of an efficient, co-ordinated and economical system of inter-State transmission lines **for smooth flow of electricity from generating stations to the load centres**. No stretch of imagination would support the contention that Section 38 mandates the CTU i.e. POWERGRID is to ensure smooth flow of power to any consumer, let alone the BPL consumer.

41. In the light of above discussion we are of the view that a line between transmission system and a consumer's premises is a part of distribution system.

42. Natural offshoot of above finding would be lead to the question as to whose responsibility would be to erect, operate and maintain such EHT lines. Section 42 of the Act mandates the distribution licensee to develop, operate and maintain distribution network. Thus it would be the duty of the distribution licensee to erect, operate and maintain the EHT lines as part of its distribution network. However, if the distribution licensee decides that it does not have expertise to carry out these jobs, it can entrust the same to the transmission licensee on mutually agreed terms duly approved by the Commission. We would like to mention that many generating companies have entrusted these assignments in relation to dedicated transmission lines to concerned STU. "

It is important to note that this judgment of the Hon'ble Tribunal has not been challenged in the Hon'ble Supreme Court and has, therefore, attained finality.

Judgment in Appeal No. 171 and 187 of 2010 dated 5th August, 2011:

One of the issue before the Hon'ble Tribunal was status of an 11 kV line connecting a generating station with a consumer premises. The area distribution licensee (WESCO) claimed it to be part of its distribution system and the generator claimed it to be dedicated transmission line under Section 9 of the 2003 Act. The Odissa Commission held that the 11 kV line in question was part of distribution system of WESCO and accordingly the distribution licensee is entitled for wheeling charges for use of its line. The Hon'ble Tribunal upheld the view of the Odissa Commission. Relevant extracts of the Hon'ble Tribunal given below:

.....

62. Next question for our consideration as to whether 11 kV feeder between Steel Company and Cement Company is a dedicated transmission line in terms of Section 9 of the Electricity Act 2003 or is a part of Distribution System of distribution licensee in terms of Section 2(16) of the Act?

63. The Appellant, WESCO has argued that as per provisions of Section 2(16) read with Rule 4 Electricity Rule 2005, the line in question is a part of its distribution system. On the other hand Ld Counsel for the Respondent No.2 stoutly opposed the contention of the Appellant and submitted that 11 kV line is a dedicated transmission line in terms of Section 9 of Electricity Act 2003.

...

67. Let us now examine the various provisions of the Electricity Act 2003 to determine the status of line in question.

68. Distribution System has been defined in Section 2(19) of the Act and is reproduced below:

*“(19) “distribution system” means the system of wires and associated facilities **between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;**” {emphasis added}*

69. Distribution system has further been elaborated in Rule 4 of Electricity Rules 2005 as under:

*“4. Distribution system.—The distribution system of a distribution licensee in terms of sub-Section (19) of Section 2 of the Act shall also include electric line, sub-station and electrical plant **that are primarily maintained for the purpose of distributing electricity** in the area of supply of such distribution licensee notwithstanding that such line, sub-station or electrical plant are high pressure cables or overhead lines or associated with such high pressure cables or overhead lines; or used incidentally for the purposes of transmitting electricity for others”.*

70. Conjoint reading of these two provisions would suggest that the aforesaid line is a part of distribution system as it is connected between generating station (Steel Company) and point of connection to the installation of consumer (Cement Company).

71. Sh M G Ramachandran Ld counsel of the 2nd Respondent Steel Company emphatically submitted that the line in question is part of distribution system of Steel Company but not that of distribution licensee.

72. We would now examine and decide the issue before us based on the provisions of the Electricity Act 2003 and Regulations made under therein.

73. As per definition given in Section 2(19) of the Act read with Rule 4 of Electricity Rules 2005, the Distribution system is set of wires and lines etc. primarily used for distribution of power. Only distribution licensee who has been issued license by the Appropriate Commission under Section 14 of the Act or person who has been exempted to obtain such license under Section 13 of the Act can distribute power under the Act. Steel Company is neither a distribution licensee nor had been exempted from obtaining a license. Thus it cannot own a distribution system.

...

78. The Respondent No 2, the Steel Company claimed that the line had been constructed by it at its own cost and therefore, the line belongs to them. On the other hand, WESCO claims that the line is part of its distribution system.

79. In order to resolve this issue we would refer to the provisions of the Electricity Act 2003 and the State Commission's Supply Code.

80. Section 46 of Electricity Act 2003 empowers the Distribution Licensee to recover expenditure reasonably incurred in providing any electric line or electrical plant in accordance with the Regulations framed by the State Commission. Section 46 of the Act is reproduced below:

“46. Power to recover expenditure.—The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.”

81. The State Commission has framed Distribution Supply Code incorporating the provision of Section 46 of the Act. Clause 27 of State Commission's Supply Code provides that the entire service line, irrespective of who has paid the cost of such service line, shall be the property of the licensee. Clause 27 of Supply Code is reproduced below:

"27. The entire service line, notwithstanding that whole or portion thereof has been paid for by the consumer, shall be the property of the licensee and shall be maintained by the licensee who shall always have the right to use it for the supply of energy to any other person unless the line has been provided for the exclusive use of the consumer through any arrangement agreed to in writing."

82. Section 46 of the Act authorise any distribution licensee to recover the cost incurred in providing electric line in persuasion of supply to a consumer. It could be a LT line or HT line, depending upon quantum of load requirement of consumer. State Commission have, through Regulations viz., Distribution Supply Code, provided that the said line could be laid by Distribution Licensee or by Consumer himself. In case line is laid by licensee, he would be entitled to recover the cost of the same as per provisions of the Regulations. Thus in both cases, whether the line is constructed by the consumer or by the licensee, cost of the line has to be borne by the consumer.

83. Thus the 11 kV line in question is the property of Distribution licensee as per section 46 of the Act read with Clause 27 of the Supply Code.

84. In view of above discussions we conclude that the 11 kV line from CGP of the 2nd Respondent, Steel Company to premises of the Cement Company is part of distribution system of distribution licensee i.e. the Appellant WESCO"

We have enclosed copies of the above mentioned judgments as **Annexure 6** to this submission.

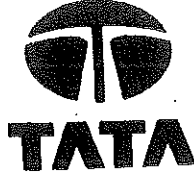
In light of the above, we humbly request the Hon'ble Commission that the two feeders from the Transmission Licence namely, 110 kV Trombay-HPCL 1 feeder (1.90 km) and 110 kV Trombay-HPCL 2 feeder (1.90 km) shall be amended and accordingly removed from the Transmission Licence of Tata Power.

Subject - Minutes of the meeting held at MSETCL, Prakashganga to discuss way forward for the verification of Transmission Licence Amendment Application of Tata Power-T in Case 137 of 2016 on 17th February, 2017 at 14:30 Hrs.

Present	
MSETCL A V Shinde S. B. Petkar Prasad Narnavare	Tata Power Swati Mehendale Manoj Kapse Tushar Dhande Neeraj Nair (Consultant)

Sr. No.	Activity	Action by
1.0	<p>INTRODUCTION:</p> <p>The Hon'ble Commission during its Technical Validation Session (TVS) in Case no. 137 of 2016 in the matter of Transmission Licence Amendment Application petition of Tata Power-T, directed State Transmission Utility (STU) to vet the amendment sought in Transmission Licence Amendment Application. Accordingly a meeting was held to discuss the way forward for the vetting process. Tata Power-T explained in detail the Transmission Licence Amendment requirements to STU.</p> <p>Following are the key action items finalized during the meeting.</p>	-
2.0	<p>Single Line Diagram for Receiving Station of Tata Power-T:</p> <p>It has been decided, that to validate the number of bays which have been sought as amendment in Transmission Licence Amendment Application of Tata Power-T, Tata Power-T will provide Single Line Diagrams (SLD) for all such Receiving Stations to STU in line with the directions of the Hon'ble Commission during TVS.</p>	Tata Power-T 27 th February, 2017
2.0	<p>Single Line Diagram for Transmission Lines of Tata Power-T:</p> <p>It has been decided, that to validate the line length of Transmission Lines which have been sought as amendment in Transmission Licence Amendment Application of Tata Power-T, Tata Power-T will provide Single Line Diagram (SLD) for all such Transmission Lines requiring amendment to STU, in line with the directions of the Hon'ble Commission during TVS.</p>	Tata Power-T 27 th February, 2017
3.0	<p>Site Visit to Receiving Station & Transmission Lines of Tata Power-T:</p> <p>Once Tata Power-T submits the SLD's of its Receiving Stations & Transmission</p>	STU 6 th March, 2017

Sr. No.	Activity	Action by
	Lines as stated in item no. 1 & 2, STU would plan and conduct site visits.	
3.0	Sign off on the verified SLD's Once the site visits are completed, STU will provide all SLDs duly signed off for submission to the Hon'ble Commission.	STU 8 th March, 2017
4.0	CONCLUDED	



8th March, 2017

CREG/MUM/STU/2017/047

To,

The Chief Engineer (STU),
Maharashtra State Electricity Transmission Company Ltd.
Plot No. C-19, E Block, Prakashganga,
Bandra - Kurla Complex,
Bandra (East), Mumbai - 400 051

Dear Sir,

Subject:- Submission of Single Line Diagrams (SLD) of Transmission Lines and Receiving Stations of Tata Power-T for its verification by STU

- Ref:- 1. Technical Validation Session (TVS) for the Application of Tata Power-T for Transmission Licence Amendment at MERC on 9th February, 2017
2. MoM of TVS for the Application of Tata Power-T for Transmission Licence Amendment in Case No. 137 of 2016 by Hon'ble Commission dated 15th February, 2017
3. Meeting held at Office of MSETCL, Prakashganga to discuss way forward for the verification of Transmission Licence Amendment Application of Tata Power-T in Case No. 137 of 2016 on 17th February, 2017

This is in reference to the Meeting held at Office of MSETCL, Prakashganga to discuss way forward for the verification of Transmission Licence Amendment Application of Tata Power-T in Case No. 137 of 2016 on 17th February, 2017. As decided during the meeting, we are attaching the following for your verification in line with the directions of the Hon'ble Commission during TVS as **Appendix** to this letter.

*Received
on 09.3.2017*

S. K. Kulkarni
Executive Engineer
STU (Regulatory)
M.S.E.T.C.L.

TATA POWER

The Tata Power Company Limited

Backbay Receiving Station, Regulation Department 148-Lt Gen. J Bhonsale Marg Nariman Point Mumbai - 400 021
Tel 91 22 6717 2903

Registered Office Bombay House 24 Homi Mody Street Mumbai 400 001

CIN : L28920MH1919PLC000567 Website : www.tatapower Email : tatapower@tatapower.com



- Single Line Diagrams of Transmission Lines
- Single Line Diagrams of Receiving Stations
- Summary sheet for proposed Bays and Transmission Lines

We would be happy to provide any further information or have any further discussions in this regards, if required.

Thanking you,

Yours faithfully,

Swati Mehendale
8/7/15.

Ms. Swati Mehendale
Head Regulatory (Western Region)
Encl: Appendix

Received
27/09/2017

[Signature]
Executive Engineer
STU (Regulatory)
M.S.E.T.C.L.

11th April, 2017

CREG/MUM/STU/2017/63

To,

The Chief Engineer (STU),
Maharashtra State Electricity Transmission Company Ltd.
Plot No. C-19, E Block, Prakashganga,
Bandra - Kurla Complex,
Bandra (East), Mumbai - 400 051

Dear Sir,

Subject:- Revised Submission of Single Line Diagrams (SLD) of Transmission Receiving Stations of Tata Power-T for its verification by STU

- Ref:- 1. Technical Validation Session (TVS) for the Application of Tata Power-T for Transmission Licence Amendment at MERC on 9th February, 2017
2. MoM of TVS for the Application of Tata Power-T for Transmission Licence Amendment in Case No. 137 of 2016 by Hon'ble Commission dated 15th February, 2017
3. Meeting held at Office of MSETCL, Prakashganga to discuss way forward for the verification of Transmission Licence Amendment Application of Tata Power-T in Case No. 137 of 2016 on 17th February, 2017
4. Letter to STU ref. CREG/MUM/STU/2017/047 dated 8th March 2017

This is in reference to the verification of Transmission Licence Amendment Application of Tata Power-T in Case No. 137 of 2016 on 17th February, 2017. Tata Power-T has submitted the following documents for your verification in line with the directions of the Hon'ble Commission through our reference letter CREG/MUM/STU/2017/047 dated 8th March 2017,

Received
13/4/2017
Executive Engineer
STU (Regulatory)
M.S.E.T.C.L.

TATA POWER

The Tata Power Company Limited
Dharavi Receiving Station, Matunga, Mumbai 400 019
Tel 91 22 6666 8011 Fax 91 22 6666 8012

Registered Office Bombay House, 24, Homi Mody Street Mumbai- 400 001



- Single Line Diagrams of Transmission Lines
- Single Line Diagrams of Receiving Stations
- Summary sheet for proposed Bays and Transmission Lines

Further in the process of finalisation of Single Line Diagram of Receiving Stations, we have identified certain discrepancies in count of bays which we are re-submitting for your verification and further submission to MERC as **Appendix** to this letter.

We would be happy to provide any further information or have any further discussions in this regards, if required.

Thanking you,

Yours faithfully,

A handwritten signature in black ink, appearing to read 'S. Mehendale'.

Ms. Swati Mehendale
Head Regulatory (Western Region)
Encl: Appendix

Appendix

Bays Verification Report to STU as on 12th April 2017

MERC Case No. 137 of 2016

The Tata Power Company Ltd. -- Transmission, Mumbai.

Name of Receiving Station	Voltage Level	As in TPC-T Petition	Final nos. as per STD	Remarks
Ambernath	110	12	12	
	22	22	22	
Backbay	220	7	7	
	110	12	12	
	33	24	26	Two Bus PT missed out
Bandra Kurla Complex	110	9	9	
	33	36	36	
Bhivpuri	110	1	1	
Borivli	220	14	14	
	110	19	19	
	33	29	29	
	22	37	37	
Carnac	220	4	4	
	110	17	16	One bay inadvertently added
	33	58	58	
	22	27	27	
Central Railway (Wadala)	110	4	2	2 Line PT inadvertently added
Chembur	110	10	10	
	22	32	31	1 bay inadvertently added
	11	4	4	
Davdi	110	7	7	
Dharavi	220	13	13	
	110	33	33	
	33	71	76	Incorrect cross count of 33 & 22 kV
	22	73	69	Incorrect cross count of 33 & 22 kV
Grant Road	110	5	5	
Bhokarpada (IXORA) Receiving Station	110	8	8	
	33	27	27	
Kalyan	110	16	16	
	22	21	21	
Kolshet Receiving Station	110	7	7	
	22	16	16	
Mahalaxmi	220	8	8	
	110	15	15	
	33	30	30	
Malad	22	30	30	
	110	13	13	
	22	37	37	
Mankhurd	110	14	9	
	22	15	15	
MSETCL Receiving Station Borivali and Kalw	220	4	4	
Panvel	110	4	4	
	22	9	9	
Parel	110	21	21	
	33	36	36	
	22	41	41	
	7	28	28	
Powai	110	10	10	
	33	27	27	
Sahar Receiving Station	220	9	9	
	33	40	40	
Saki	220	9	9	
	110	10	10	
	33	25	25	
	22	53	57	Erroneously missed out
Salsette Receiving Station	220	15	15	
	110	21	23	2 PT missed out from New GIS
	22	33	33	
Trombay	220	5	5	
Versova	110	4	2	2 Line PT inadvertently added
	33	20	20	
Vikhroli	110	10	10	
	22	40	40	



THE TATA POWER COMPANY LIMITED

TATA AMBERNATH RECEIVING STATION

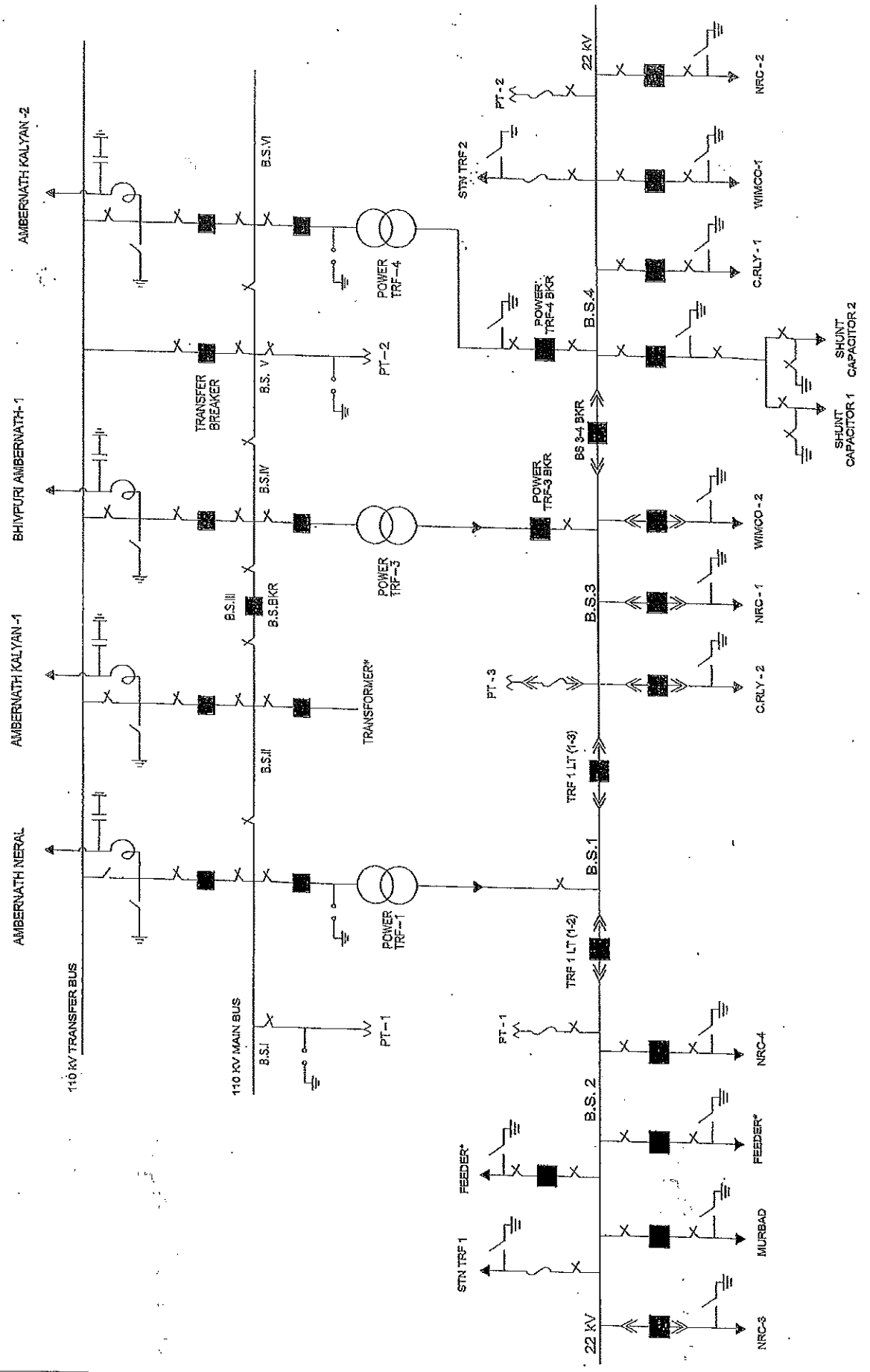
MASTER SLD

DATE: 29-01-2017

PREPARED BY: Pravin Gaikwad

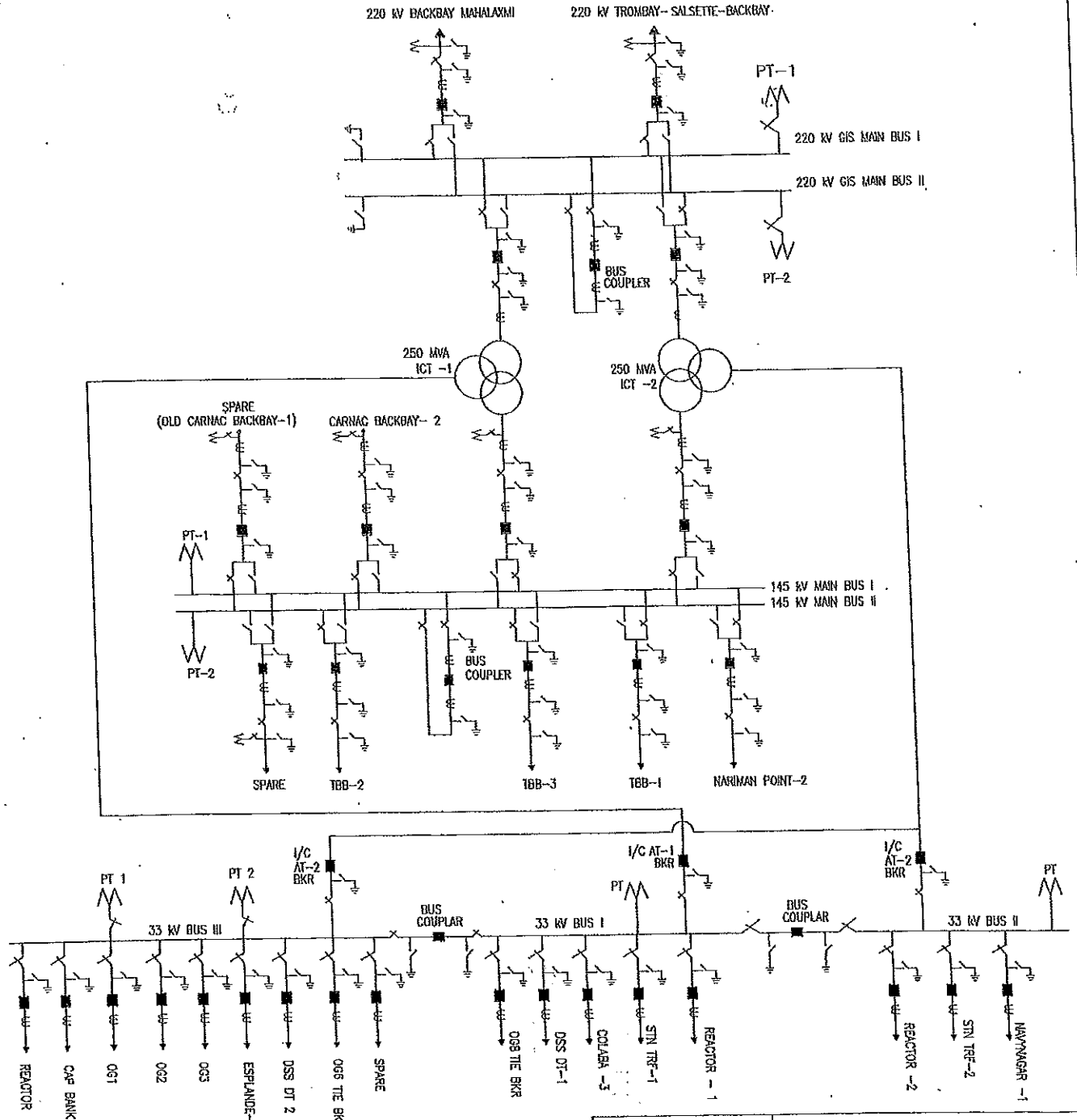
CHECKED BY:
K K SAJIVAN

APPROVED BY:
S G BHANGAONIKAR





THE TATA POWER COMPANY LIMITED BACKBAY RECEIVING STATION MASTER SLD



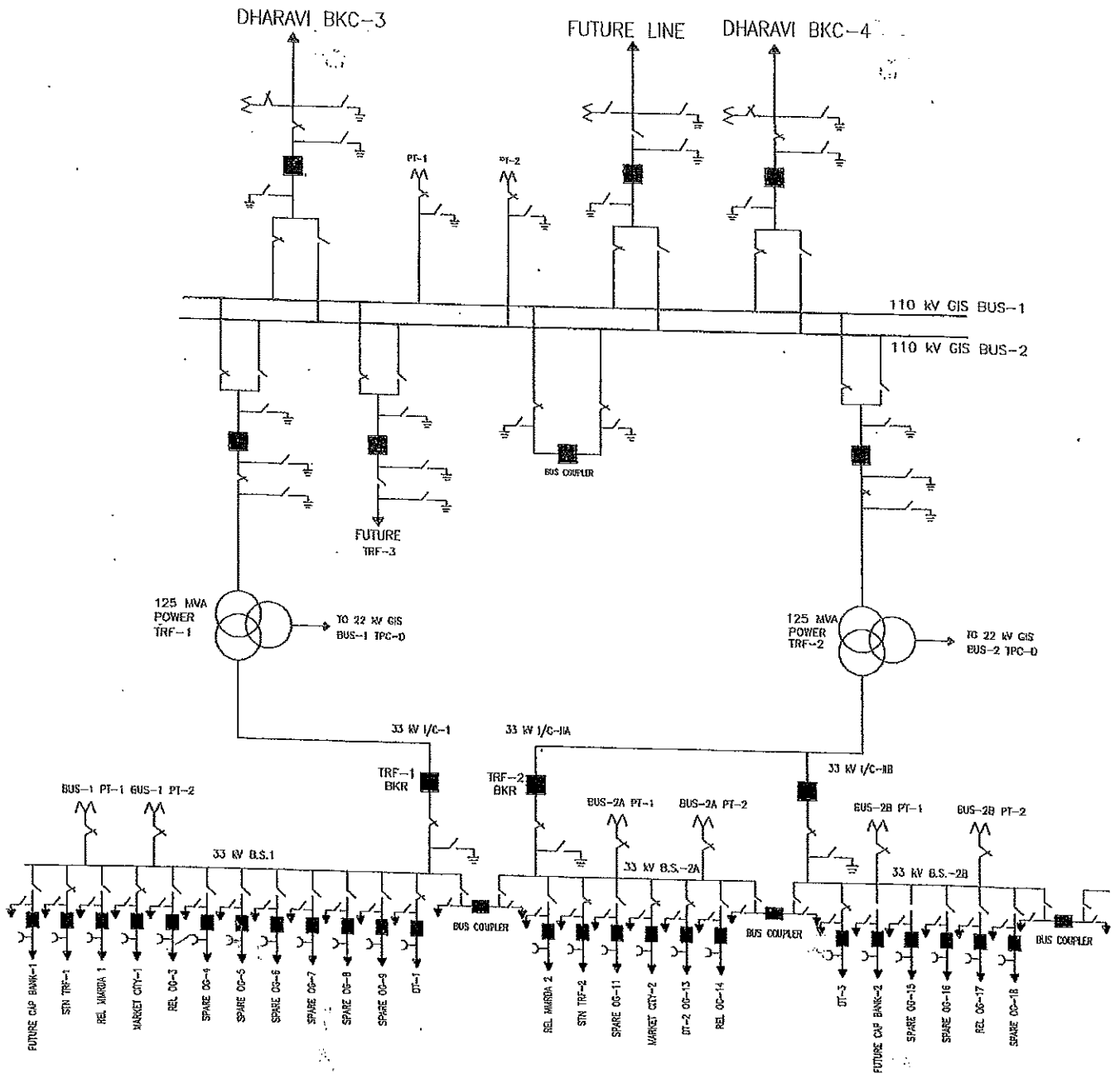
DATE:29-01-2017	PREPARED BY: Pravin Gaikwad
CHECKED BY: SUBHASH VETCHA	APPROVED BY: T. MURALEEDHARAN



THE TATA POWER COMPANY LIMITED

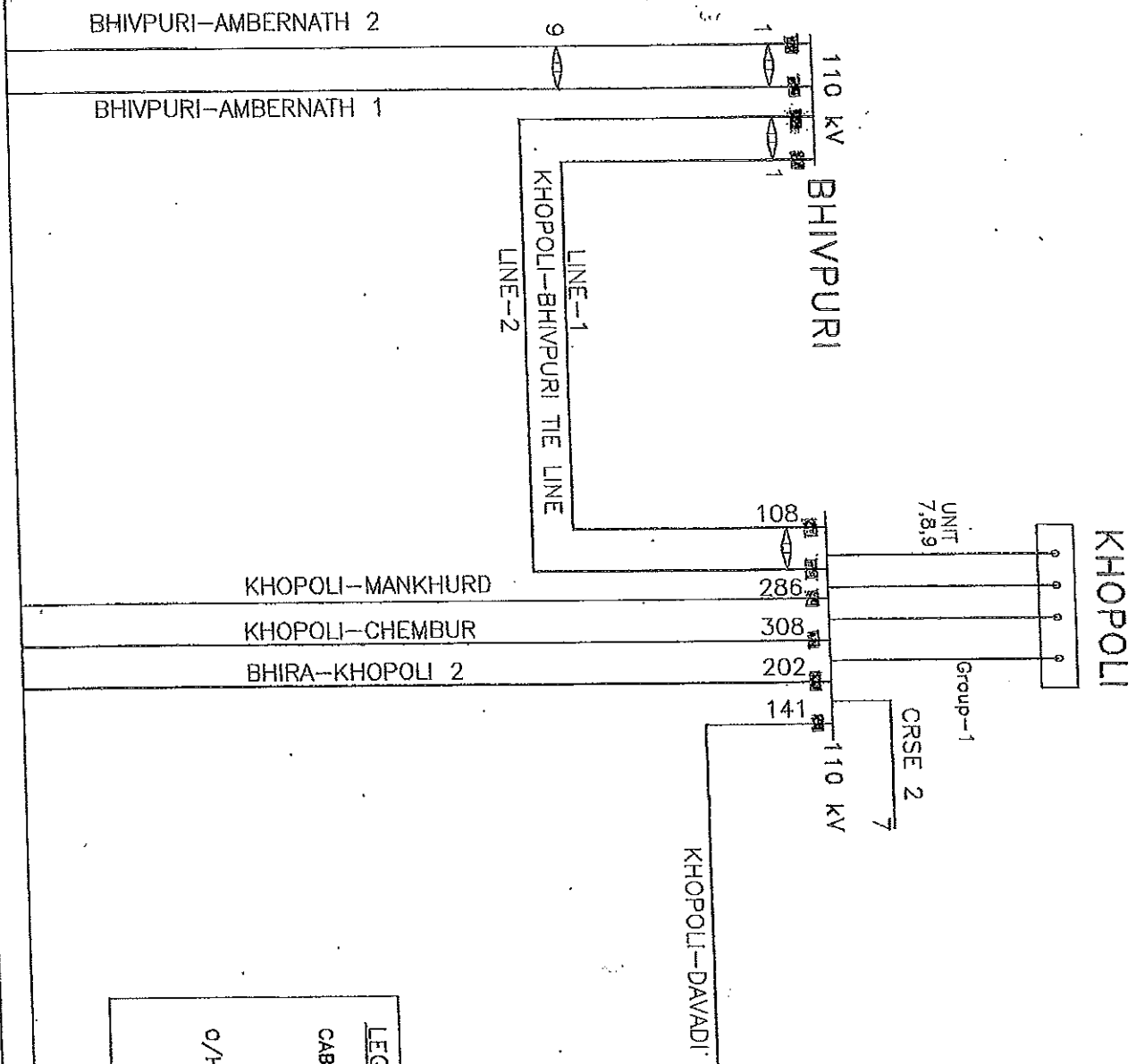
BKC RECEIVING STATION

MASTER SLD



DATE: 29-01-2017	PREPARED BY: Pravin Gaikwad
CHECKED BY: VIKAS BHONDVE	APPROVED BY: PRADEEP SAWANT

Single Line Diagram of 110 kV Khopoli Bhivpuri Tie Line 2



LEGEND-

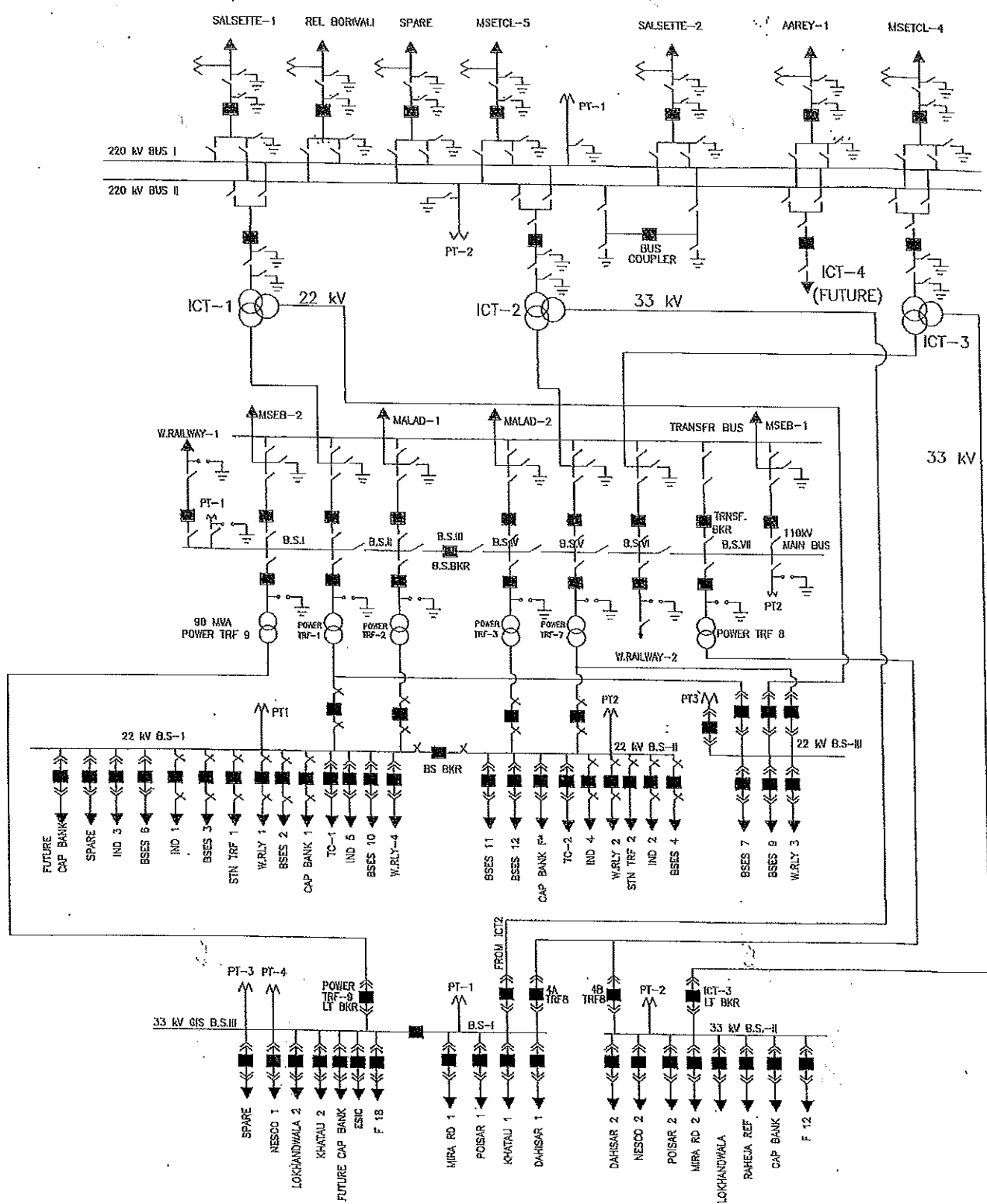
CABLE	22 kV	-----
	110 kV	-----
	220 kV	-----
O/H LINES	22 kV	=====
	110 kV	=====
	220 kV	=====

* CROSS JUMPER

DATE: 29-01-2017 PREPARED BY: Pravin Galkwad
 CHECKED BY: K K DATAR APPROVED BY: K K RAO

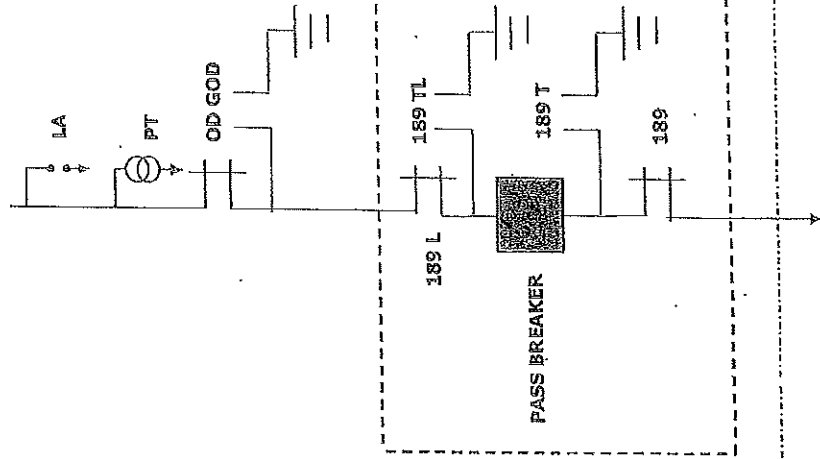


THE TATA POWER COMPANY LIMITED
 BORIVLI RECEIVING STATION
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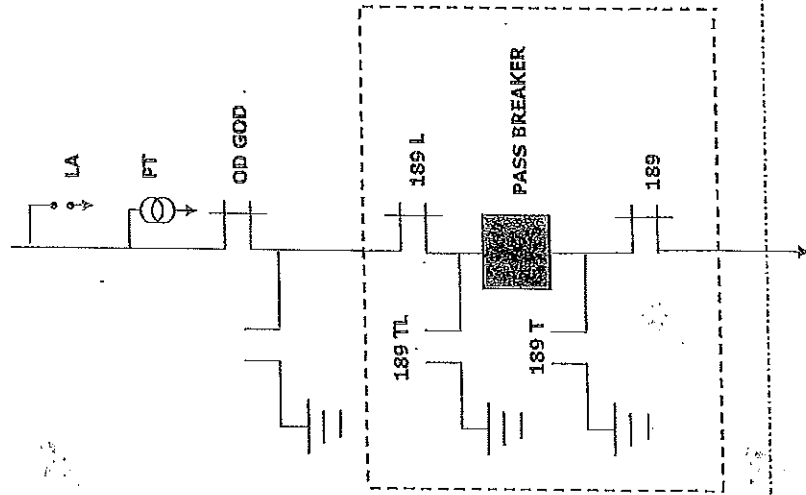


110 KV WADALA TRACTION SUBSTATION

110 KV TP4/WDL-2 LINE



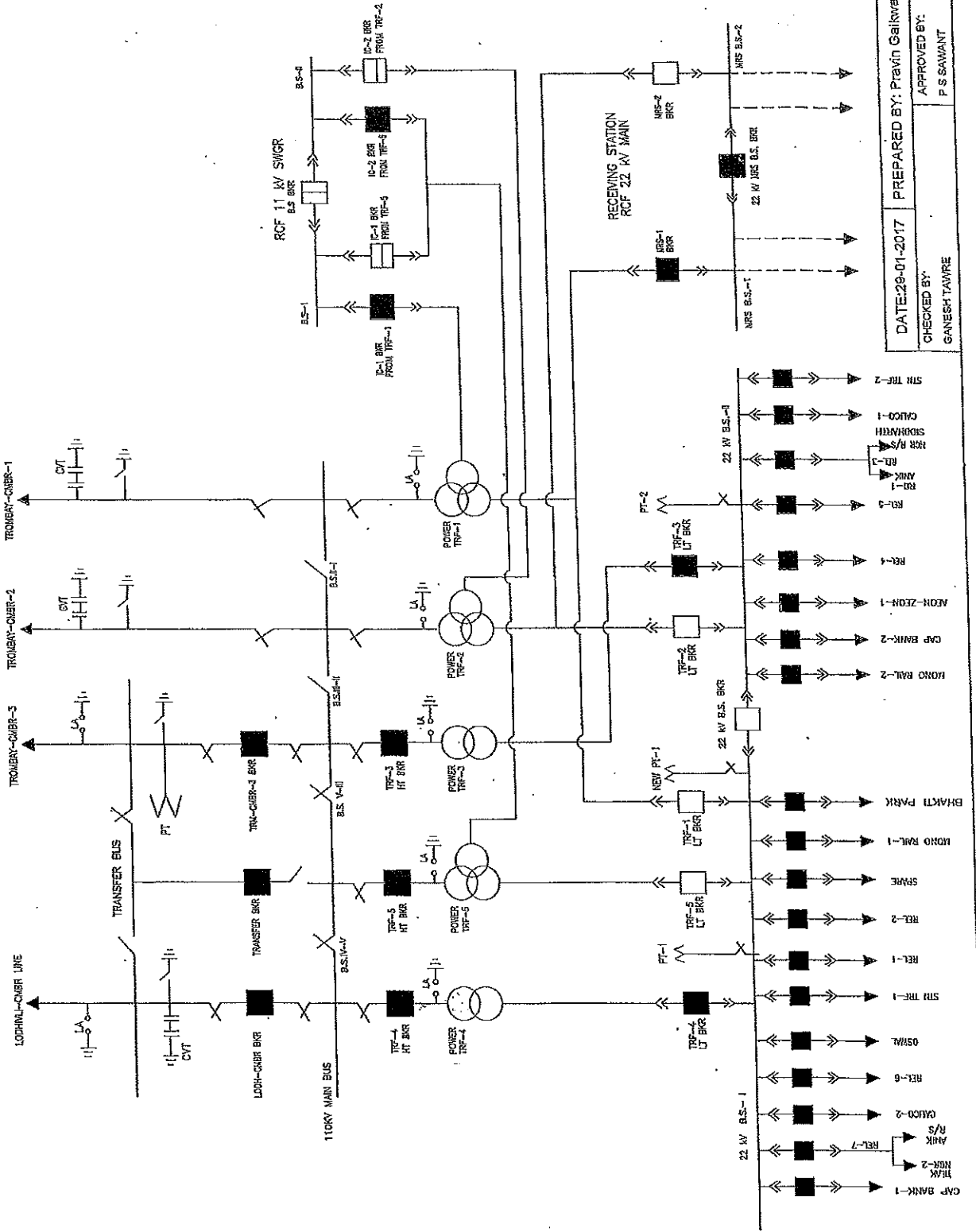
110 KV TP1/WDL-1 LINE



TATA POWER
CENTRAL RLY

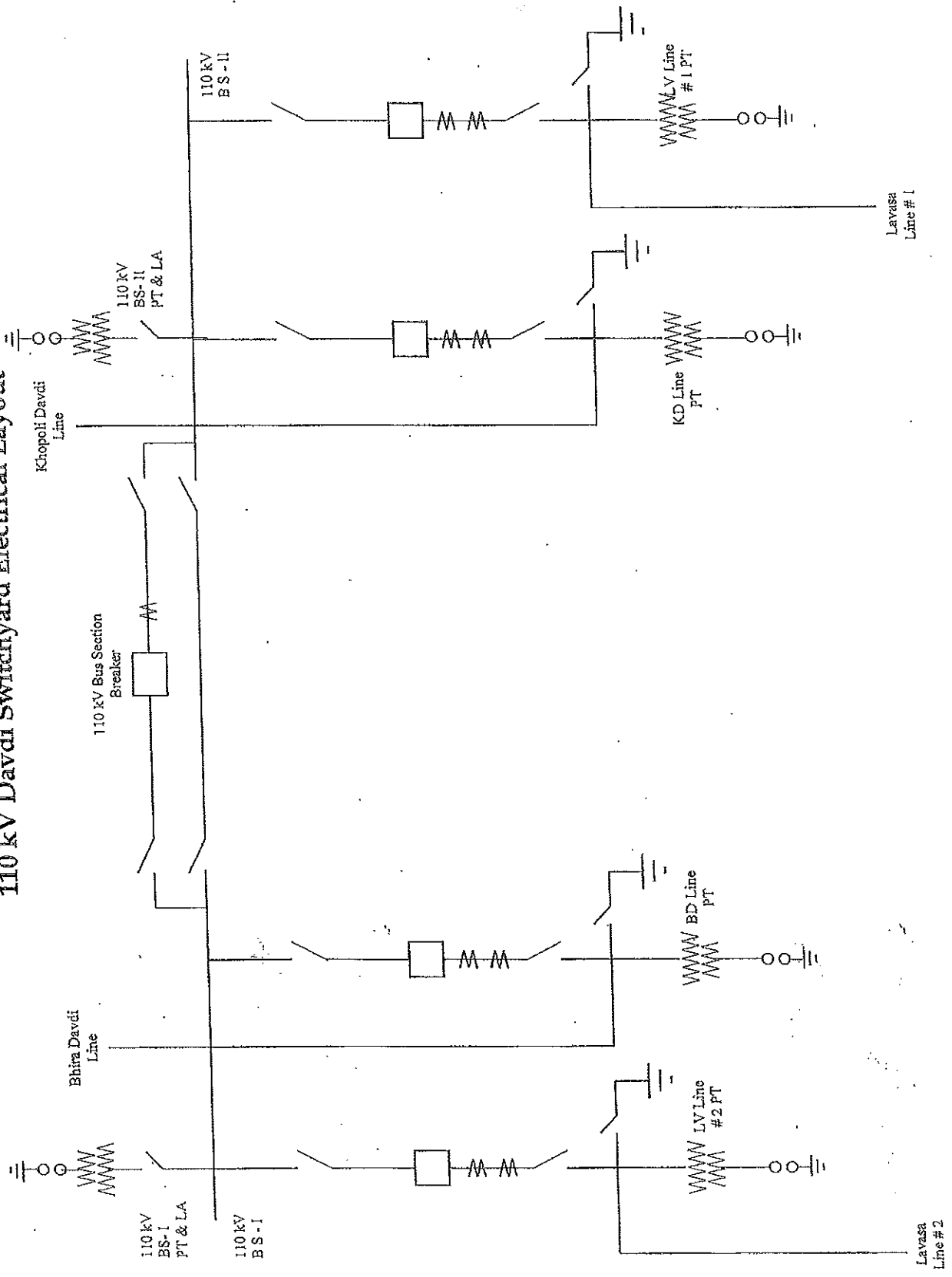


THE TATA POWER COMPANY LIMITED CHEMBUR RECEIVING STATION MASTER SLD



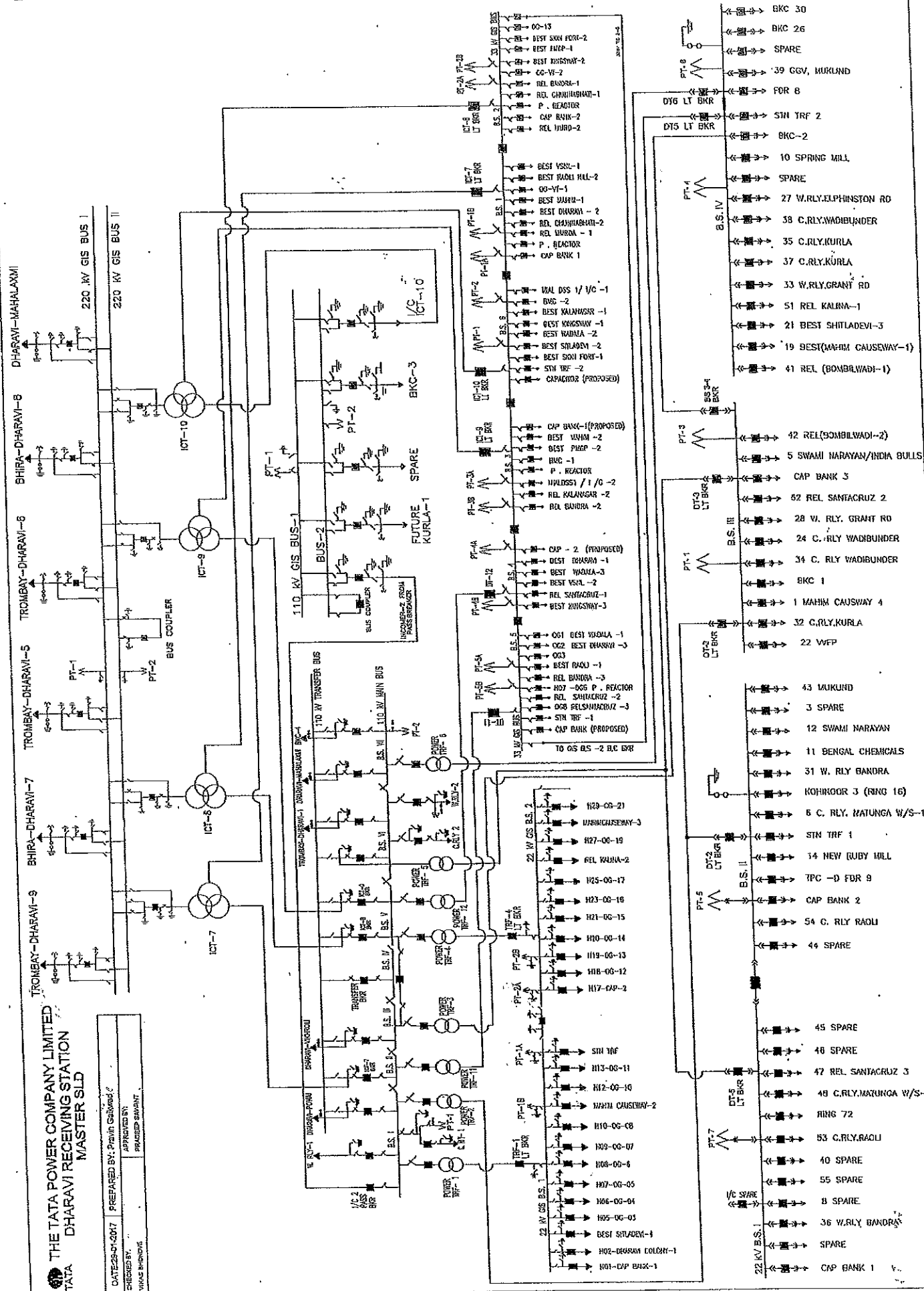
DATE:29-01-2017
CHECKED BY: GANESH TAMRE
APPROVED BY: P. S. SAWANT
PREPARED BY: Pravin Gaikwad

110 kV Davdi Switchyard Electrical Layout



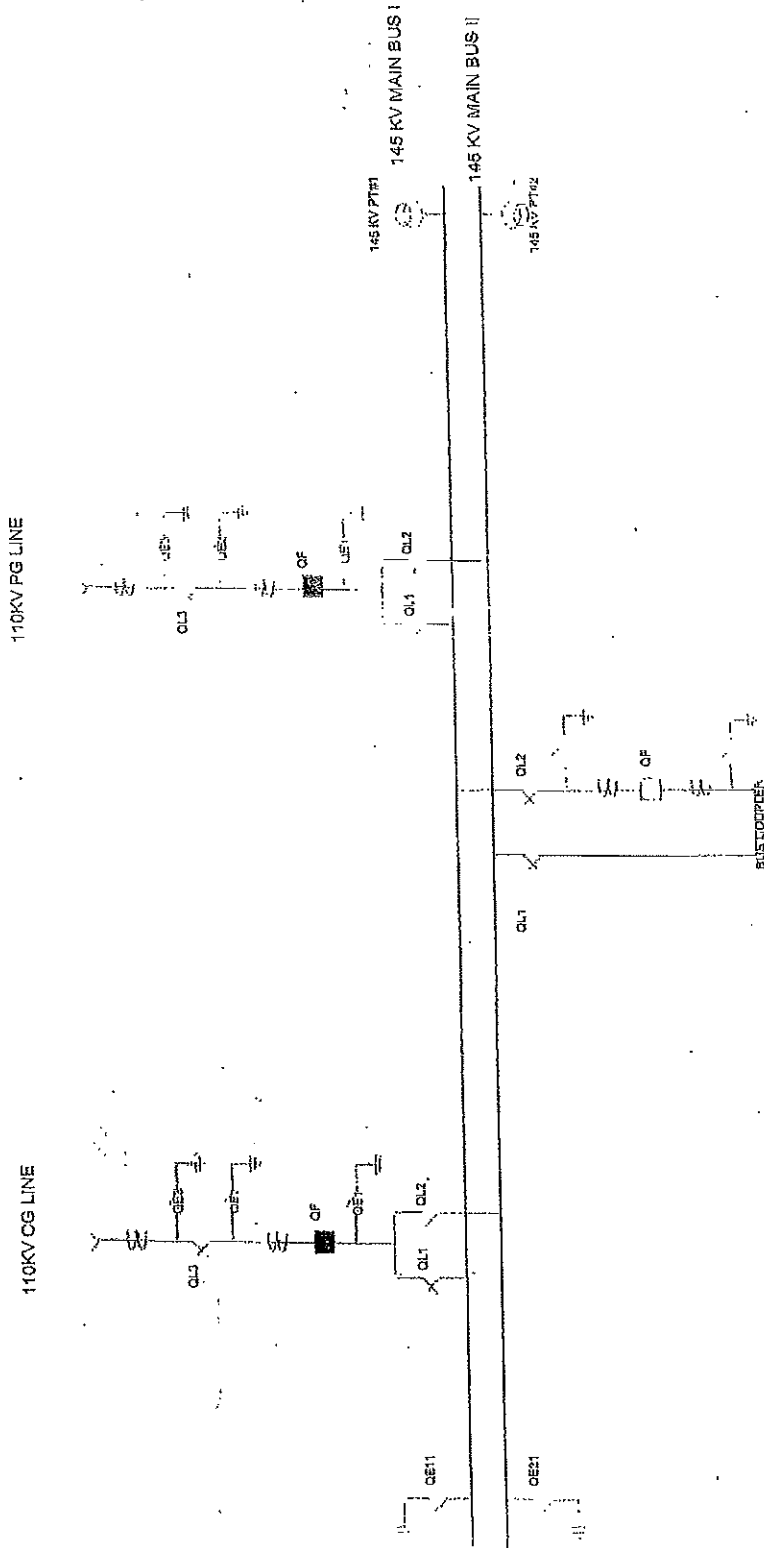
THE TATA POWER COMPANY LIMITED
TATA DHARAVI RECEIVING STATION
MASTER SLD

DATE: 23-01-2017
 PREPARED BY: PAVAN GHOSH
 CHECKED BY: ...
 APPROVED BY: ...
 VICE CHIEF ENGINEER



- BKC 30
- BKC 26
- SPARE
- '39 GV, MUKLUND
- FDR 8
- SH TRF 2
- BKC-2
- 10 SPRING MILL
- SPARE
- 27 W.RLY.ELPHINSTON RD
- 38 C.RLY.WADIBUNDER
- 35 C.RLY.KURLA
- 37 C.RLY.KURLA
- 33 W.RLY.GRANT RD
- 51 REL. KALINA-1
- 21 BEST SHILADEVI-3
- 19 BEST(MAHIM CAUSEWAY-1)
- 41 REL. (BOMBILWADI-1)
- 42 REL.(BOMBILWADI-2)
- 5 SWAMI NARAYAN/INDIA BULLS
- CAP BANK 3
- 52 REL. SANTIACRUZ 2
- 28 VI. RLY. GRANT RD
- 24 C. RLY WADIBUNDER
- 34 C. RLY WADIBUNDER
- BKC 1
- 1 MAHIM CAUSWAY 4
- 32 C.RLY.KURLA
- 22 VWF
- 43 MUKLUND
- 3 SPARE
- 12 SWAMI NARAYAN
- 11 BENGAL CHEMICALS
- 31 W. RLY BANDRA
- KOHNOR 3 (RING 16)
- 6 C. RLY. MATUNGA W/S-1
- SH TRF 1
- 14 NEW JUBY MILL
- TPC -D FDR 9
- CAP BANK 2
- 54 C. RLY RAOLI
- 46 SPARE
- 45 SPARE
- 46 SPARE
- 47 REL. SANTIACRUZ 3
- 48 C.RLY.MATUNGA W/S-2
- RING 72
- 53 C.RLY.RAOLI
- 40 SPARE
- 55 SPARE
- B SPARE
- 36 W.RLY. BANDRA
- SPARE
- CAP BANK 1

THE TATA POWER CO. LTD.
 SLD OF GRANT ROAD SIS



02
 03
 04

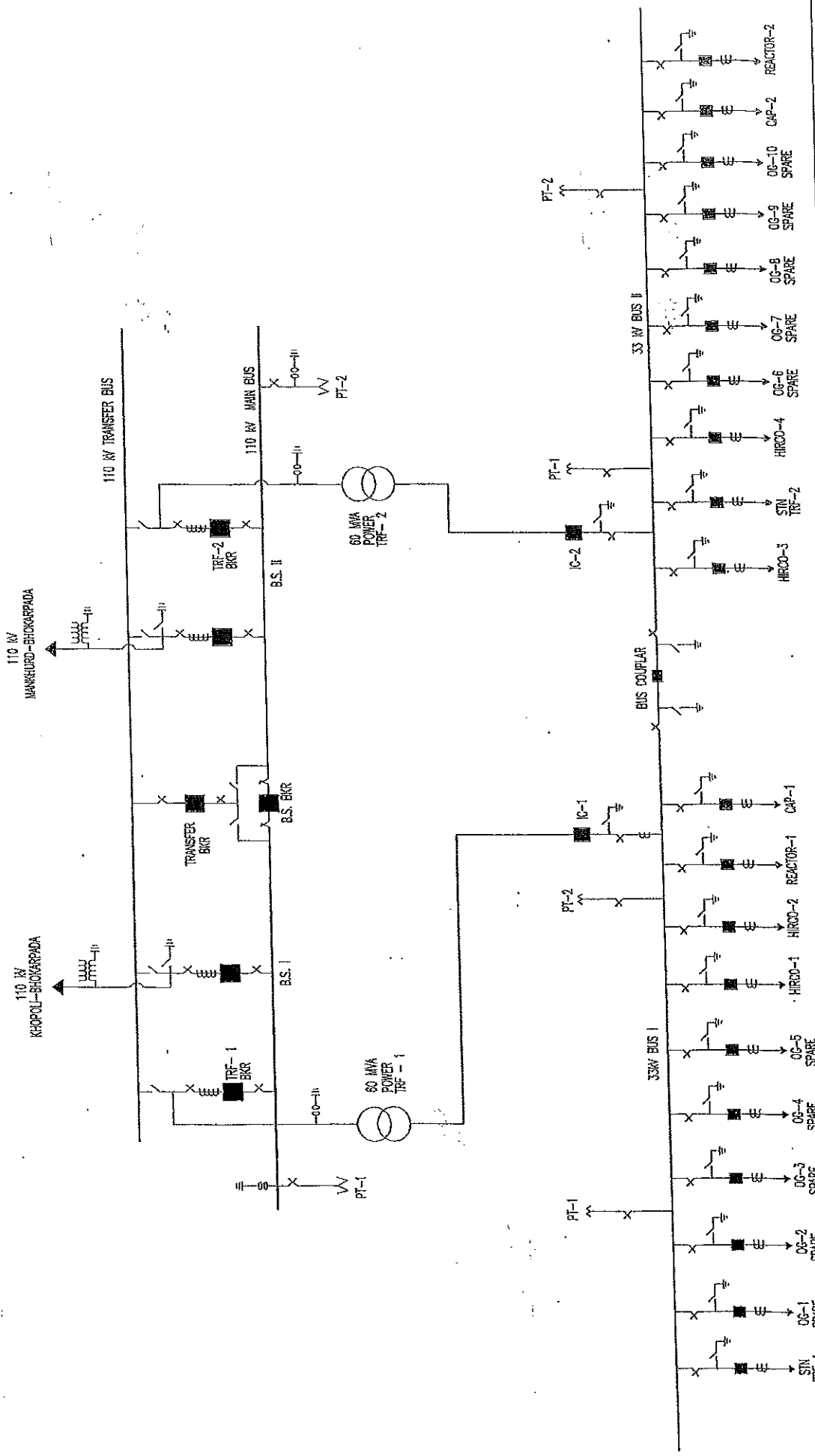
The Tata Power Company Limited
 Single Line Diagram (SLD) of Grant Road SIS
 Prepared by: NPS
 Checked by: NPS

Subramaniam
Subramaniam



TATA

THE TATA POWER COMPANY LIMITED BHOKARPADA RECEIVING STATION MASTER SLD



DATE: 29-01-2017
CHECKED BY: M P DAVIS
APPROVED BY: Pravin Gaikwad
P & S INCHARGE



THE TATA POWER COMPANY LIMITED
KALYAN RECEIVING STATION
MASTER SLD

DATE: 28-01-2017

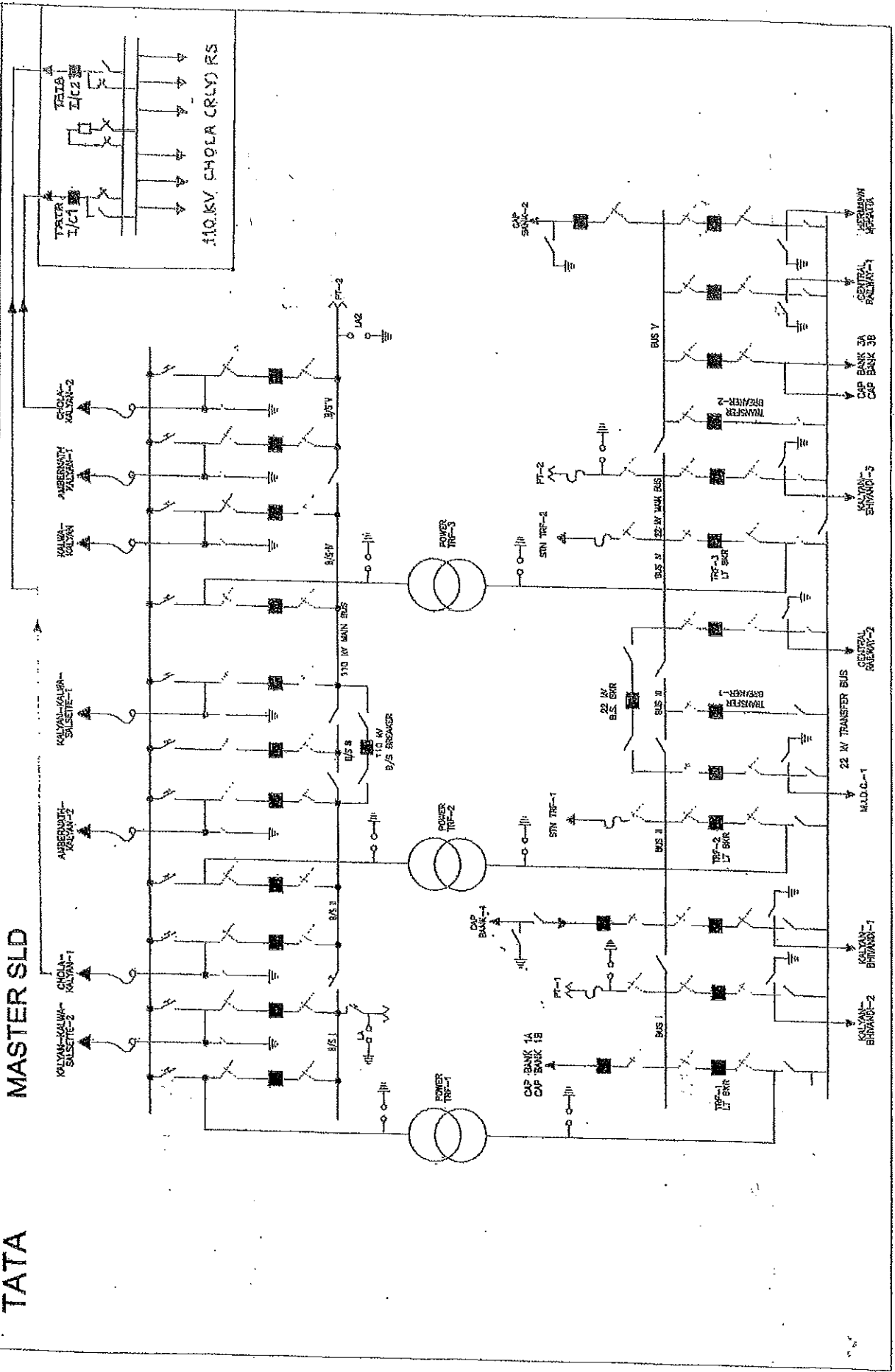
PREPARED BY: Pravin Galikwad

CHECKED BY:

APPROVED BY:

K.K. SAJWAN

S.G. BHANGAOKAR





THE TATA POWER COMPANY LIMITED
KOLSHEET RECEIVING STATION
MASTER SLD

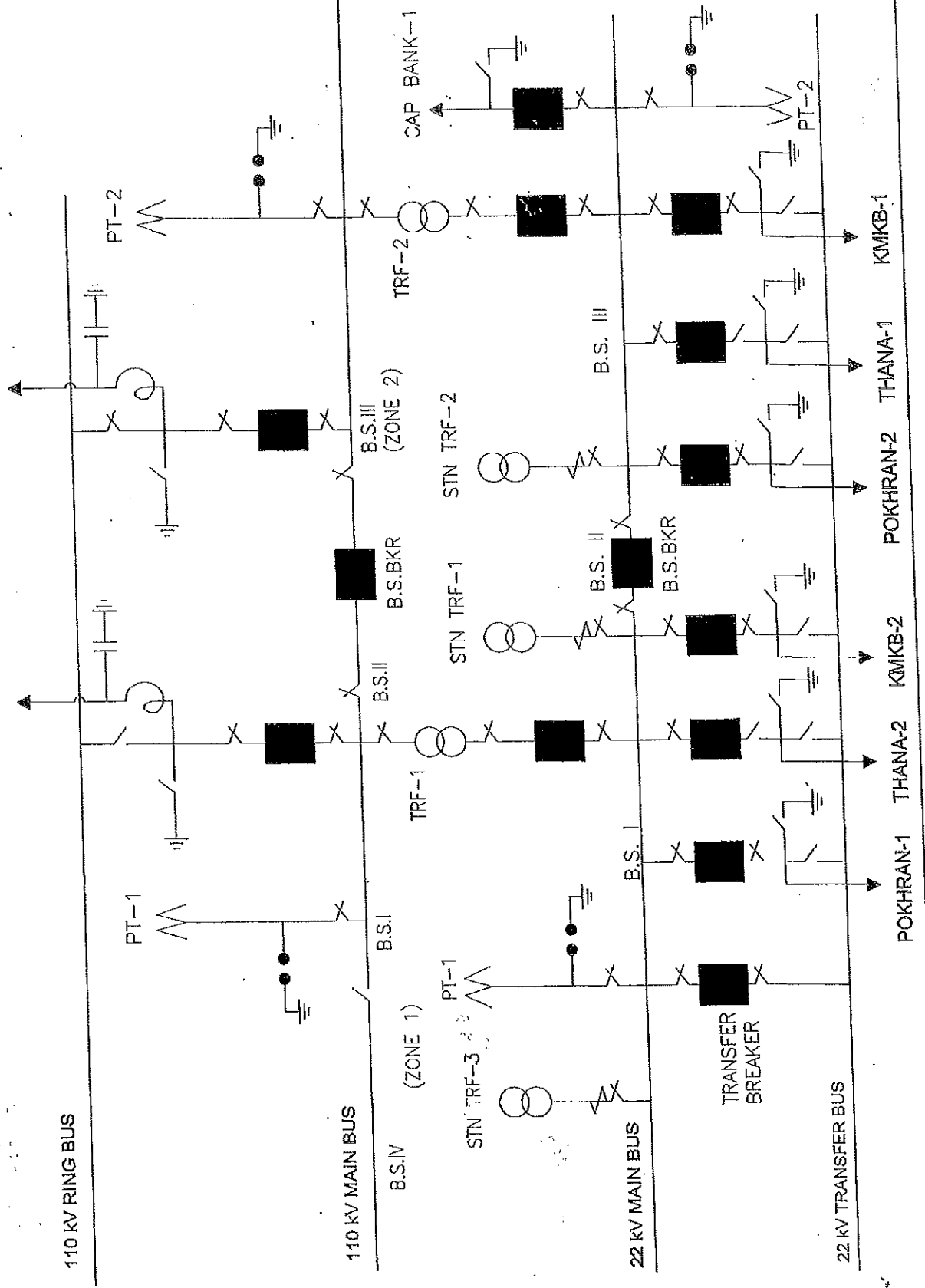
DATE: 29-01-2017 PREPARED BY: Pravin Galikwad

CHECKED BY:
K.G. RANE

APPROVED BY:
K.K. RAO

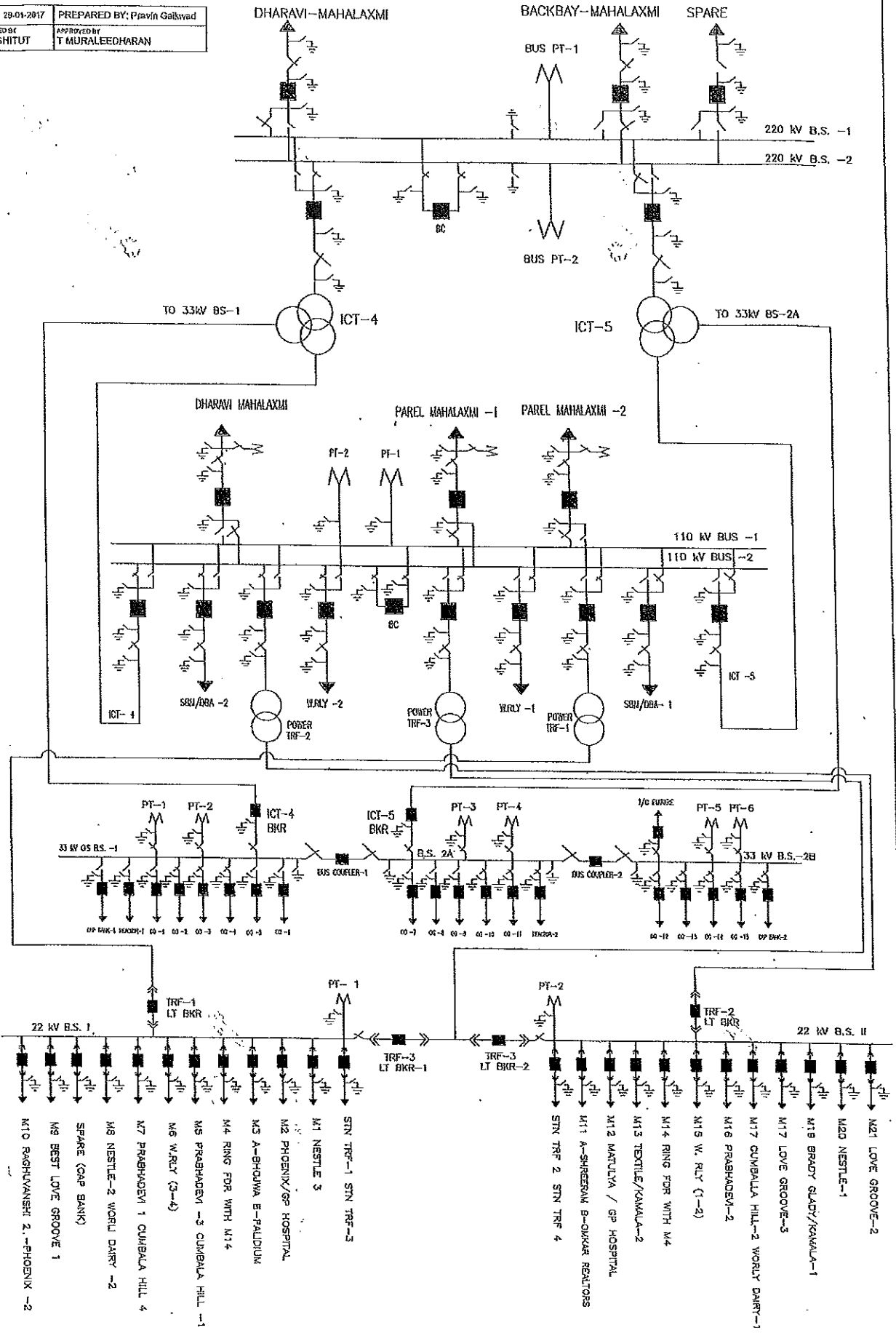
SALSETTE-KOLSHEET

BMC-KOLSHEET



THE TATA POWER COMPANY LTD
TATA MAHALAXMI RECEIVING STATION
MASTER SLD

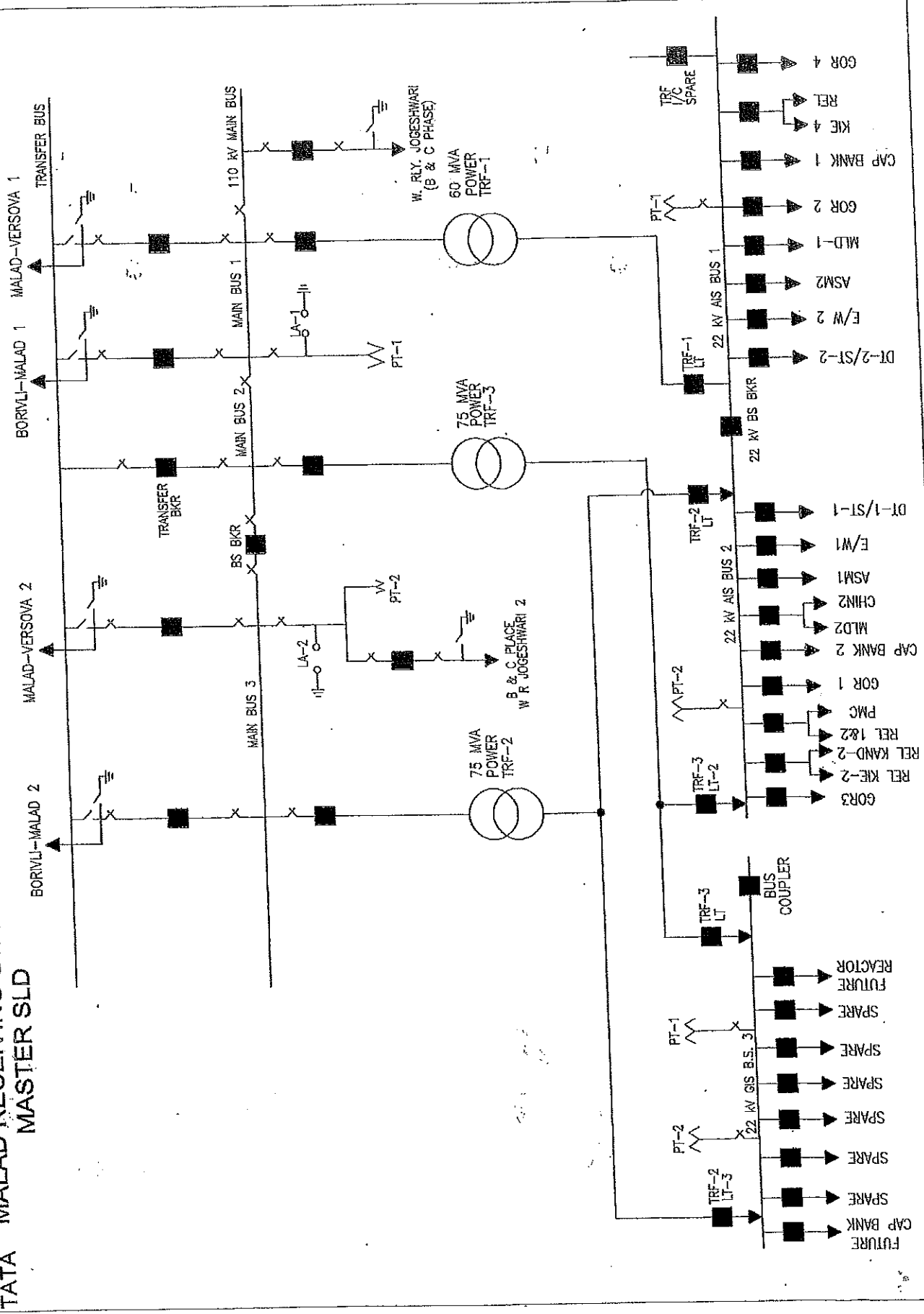
DATE 29-01-2017	PREPARED BY: Pravin Galkwad
CHECKED BY: S D SHITUT	APPROVED BY: T MURALEEDHARAN





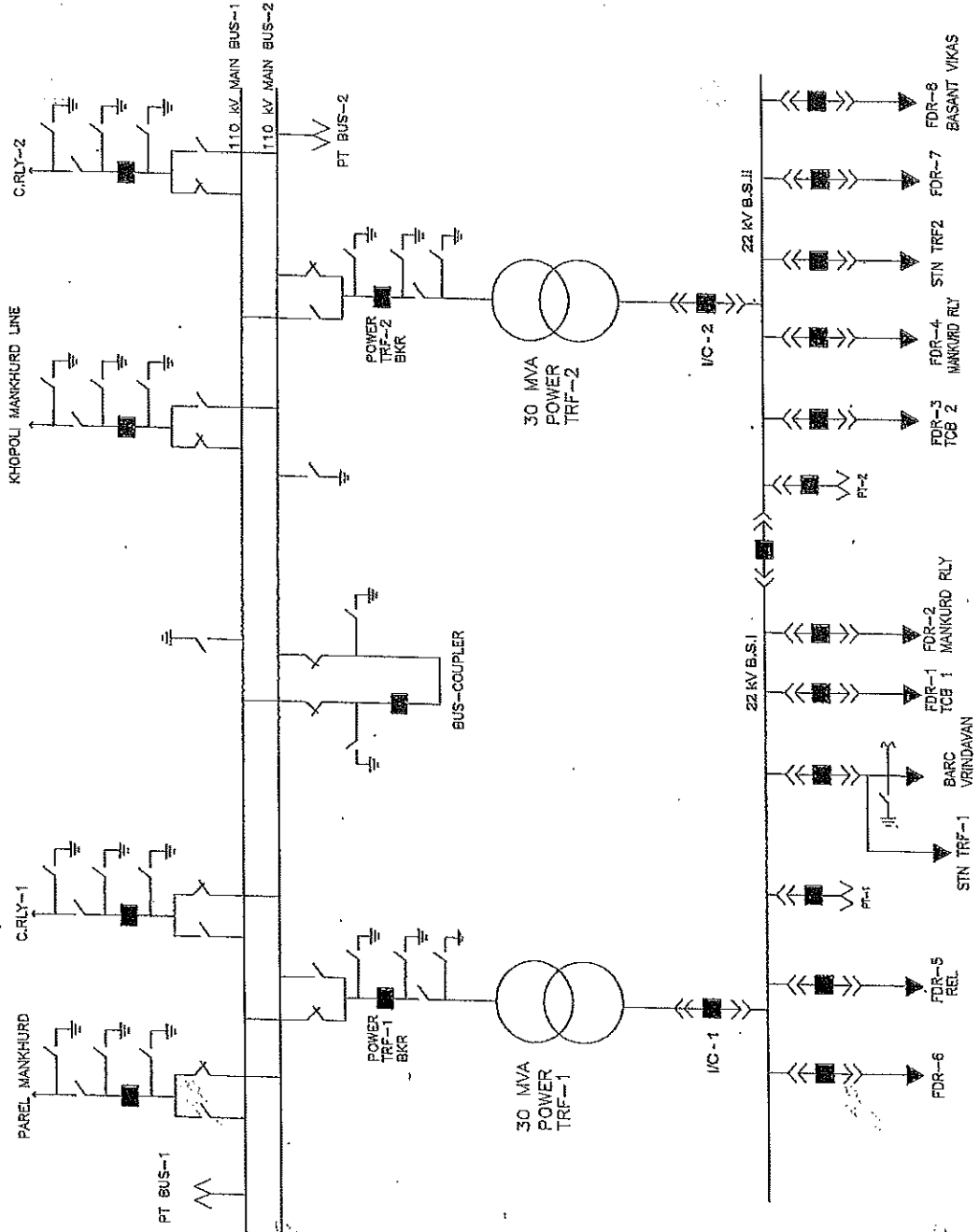
THE TATA POWER COMPANY LIMITED
TATA MALAD RECEIVING STATION
MASTER SLD

DATE: 29-01-2017
 PREPARED BY: Pravin Galgand
 CHECKED BY: K.K. DATTA
 APPROVED BY: K.K. RAO



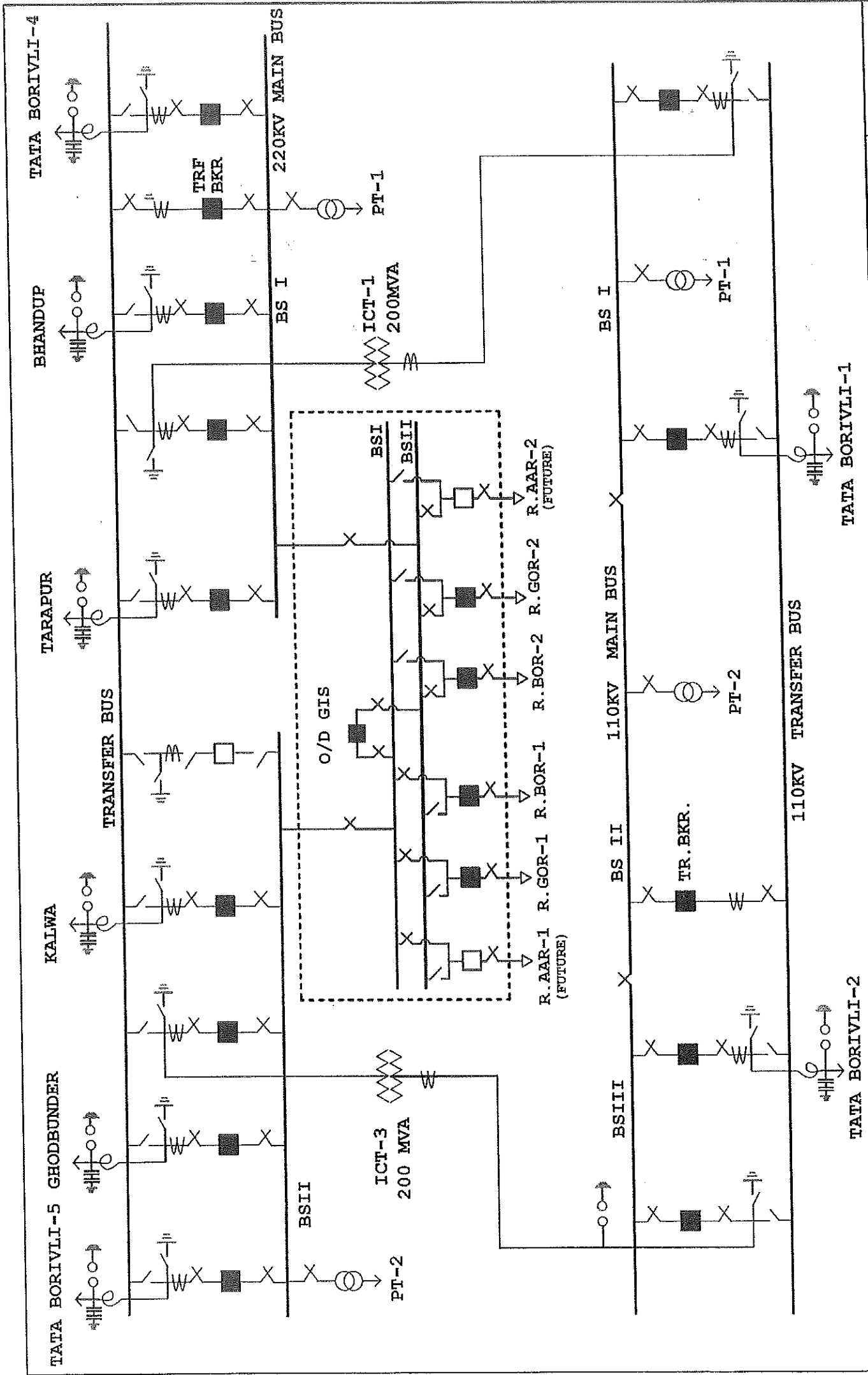


THE TATA POWER COMPANY LIMITED MANKURD RECEIVING STATION MASTER SLD



DATE: 29-01-2017
CHECKED BY: N.D.DIAS
APPROVED BY: PRADEEP SAWANT

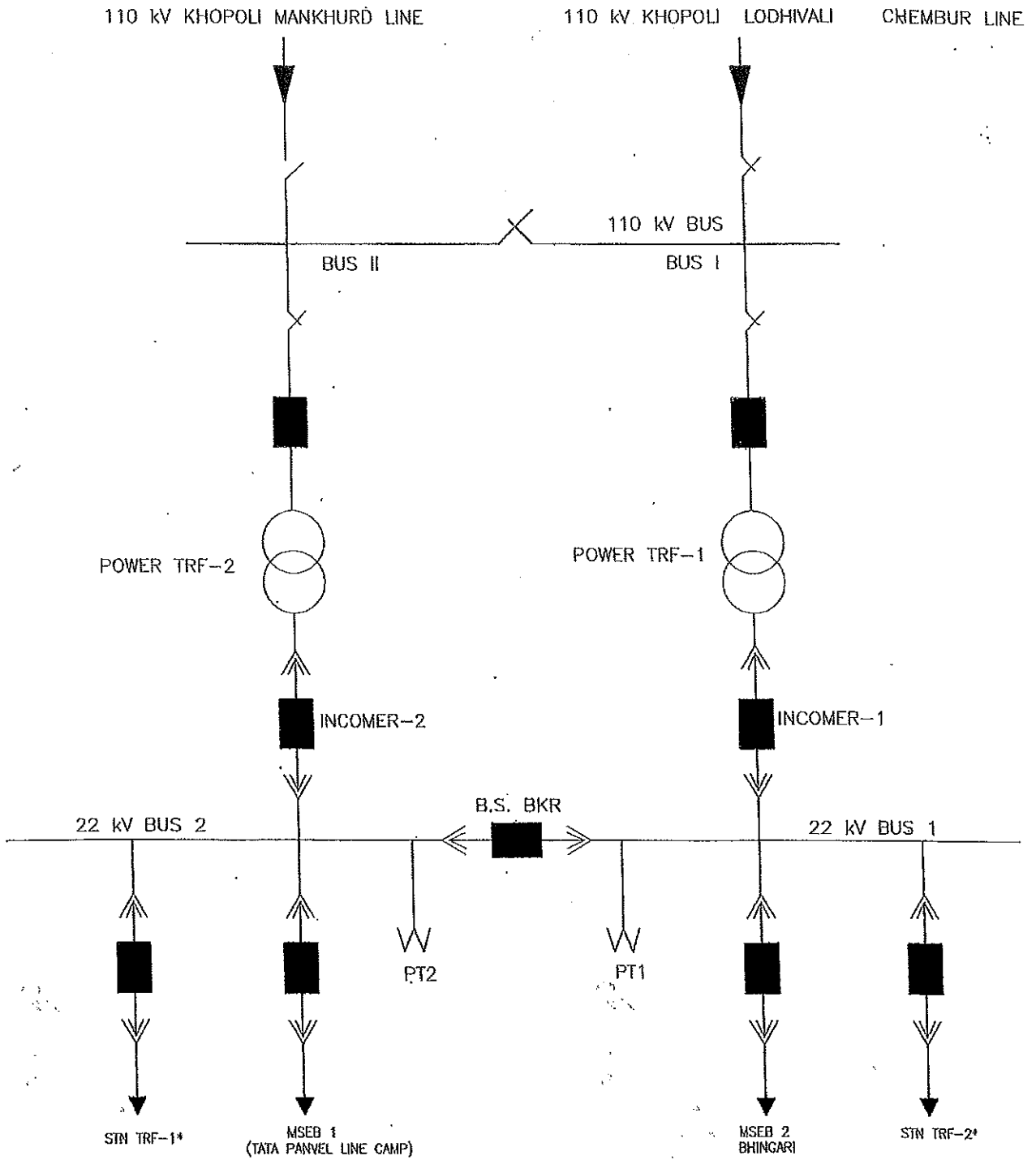
PREPARED BY: Pravin Gairwad



TATA POWER CO. LTD. PSSC	MSETCL BORIVLI 220/110KV LAYOUT	Drawing No 32	DATE 01.01.17	Prepared by NPT	Checked by RVS	Approved by PRG
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THE TATA POWER COMPANY LIMITED
PANVEL RECEIVING STATION
MASTER SLD



DATE: 29-01-2017	PREPARED BY: Pravin Galkwad
CHECKED BY: KK SAJIVAN	APPROVED BY: S G BHINGAONKAR

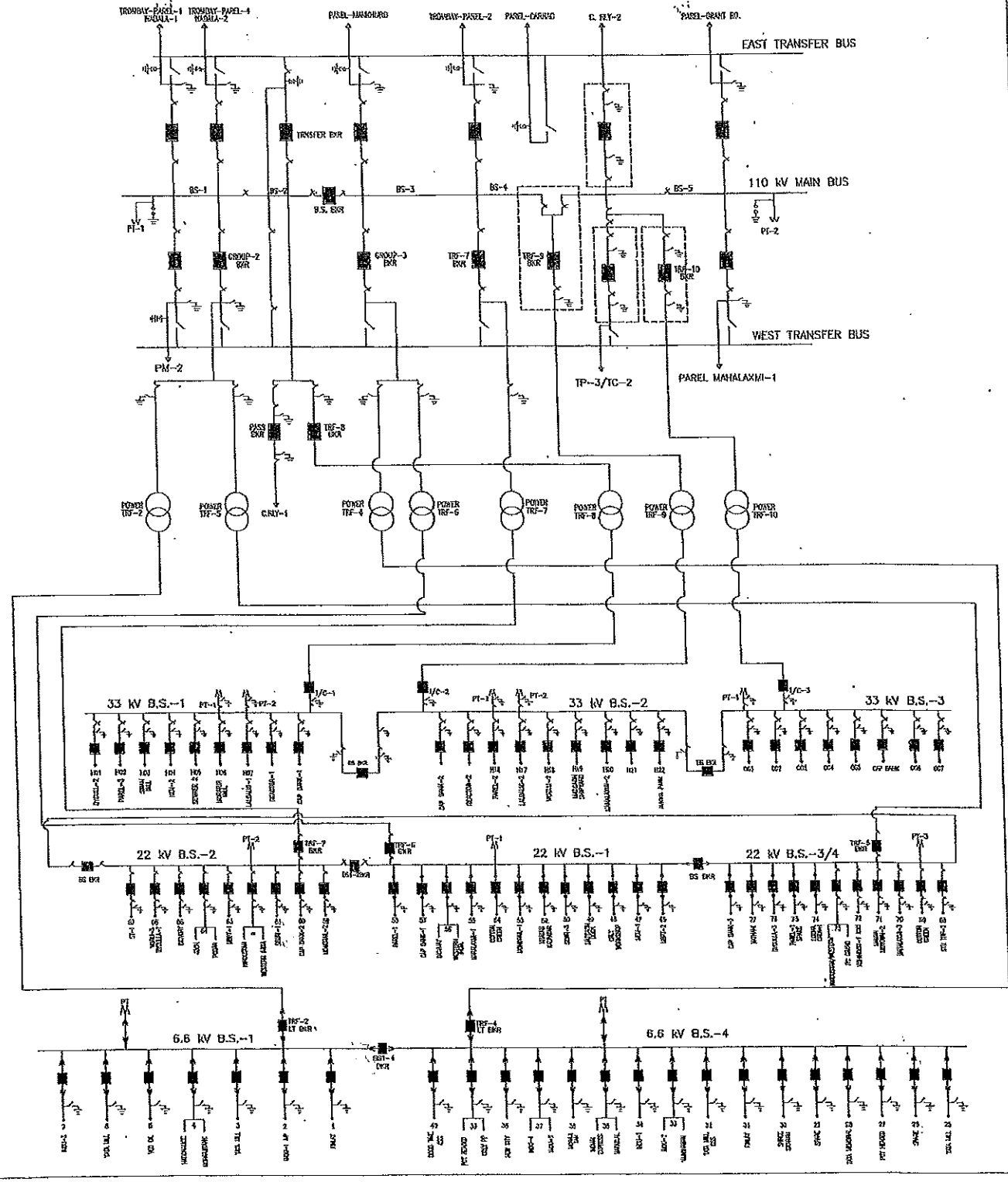


THE TATA POWER COMPANY LIMITED

PAREL RECEIVING STATION

MASTER SLD

DATE: 29-01-2017	PREPARED BY: Pravin Galkwad
CHECKED BY: S D SHITUT	APPROVED BY: TEJASLEEDHARANI

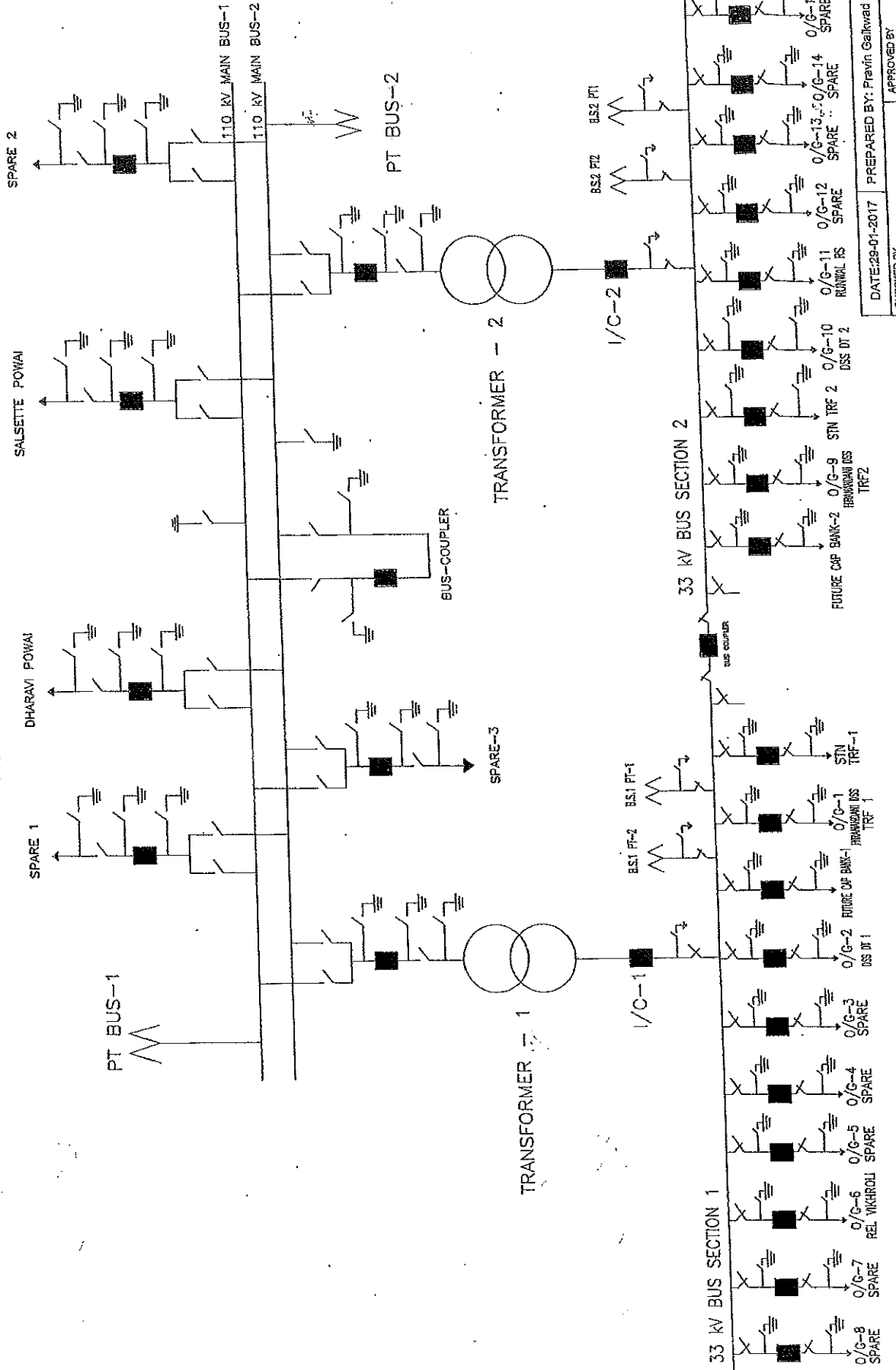




THE TATA POWER COMPANY LIMITED

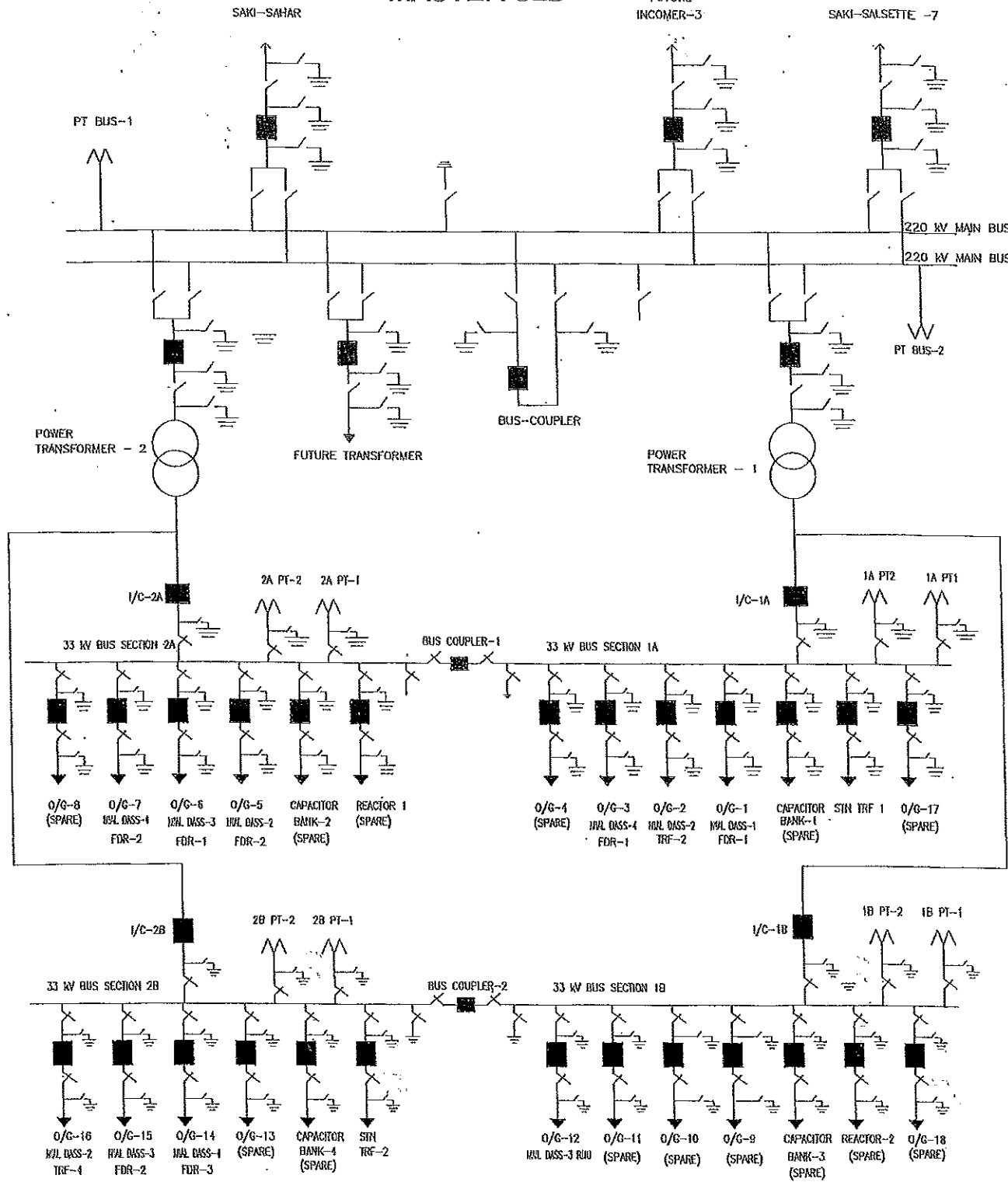
TATA POWAI RECEIVING STATION

MASTER SLD



DATE: 29-01-2017
PREPARED BY: Pravin Galikwad
CHECKED BY: D RAVIKUMAR
APPROVED BY: K K RAO


THE TATA POWER COMPANY LIMITED
TATA SAHAR RECEIVING STATION
MASTER SLD

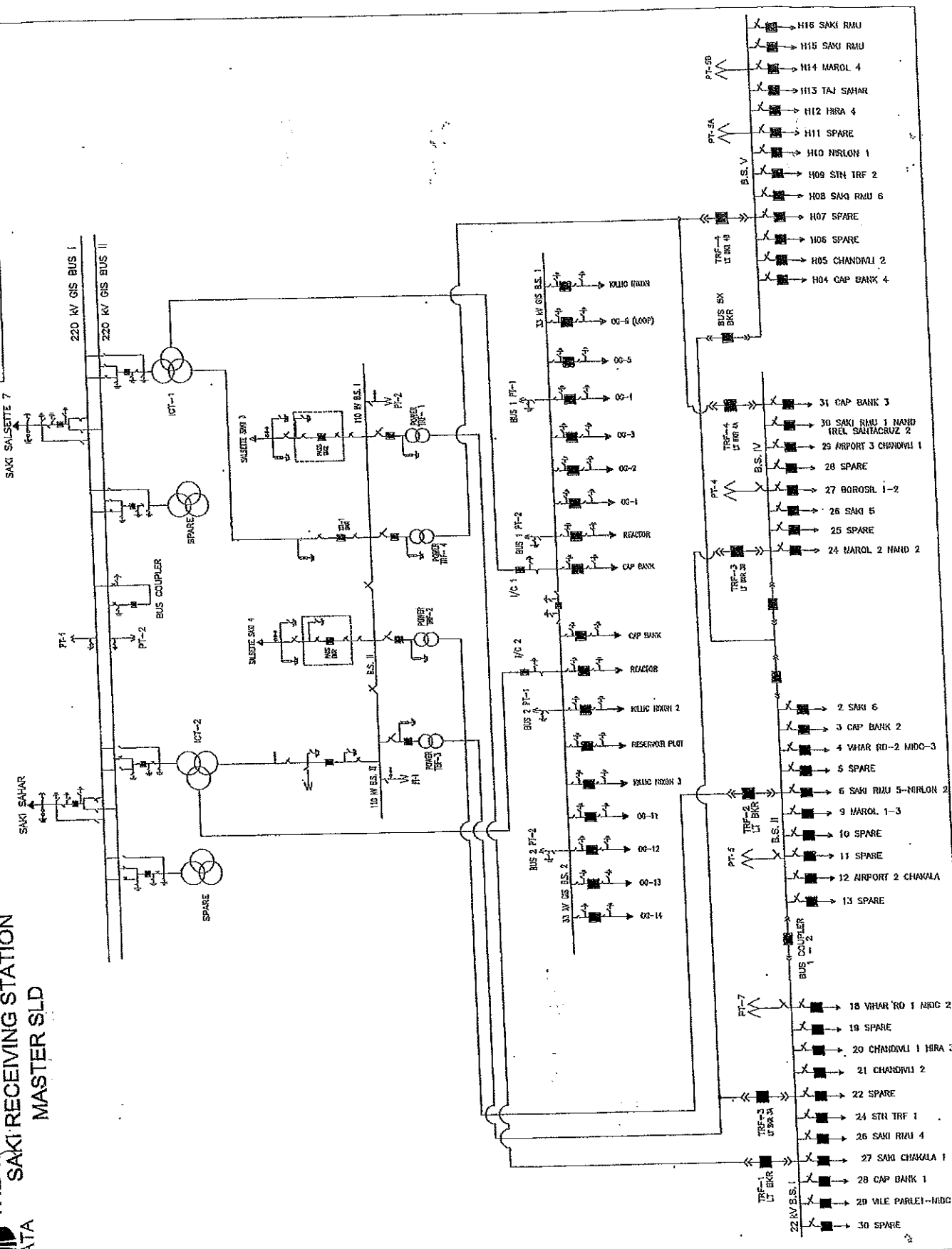


DATE: 28-01-2017	PREPARED BY: Pravin Galwad
CHECKED BY: DRAYAKHAR	APPROVED BY: KKRAG



THE TATA POWER COMPANY LIMITED
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MASTER SLD

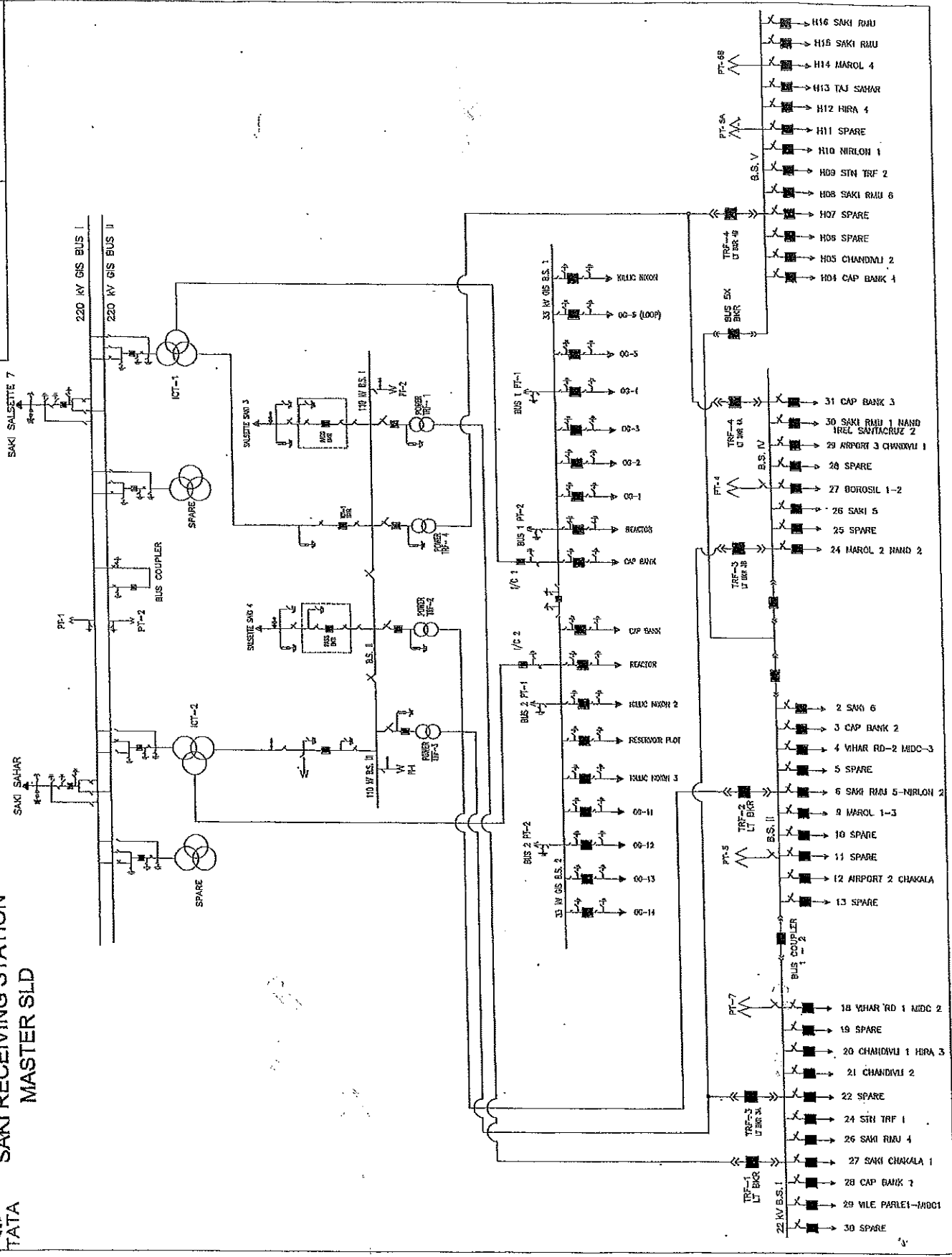
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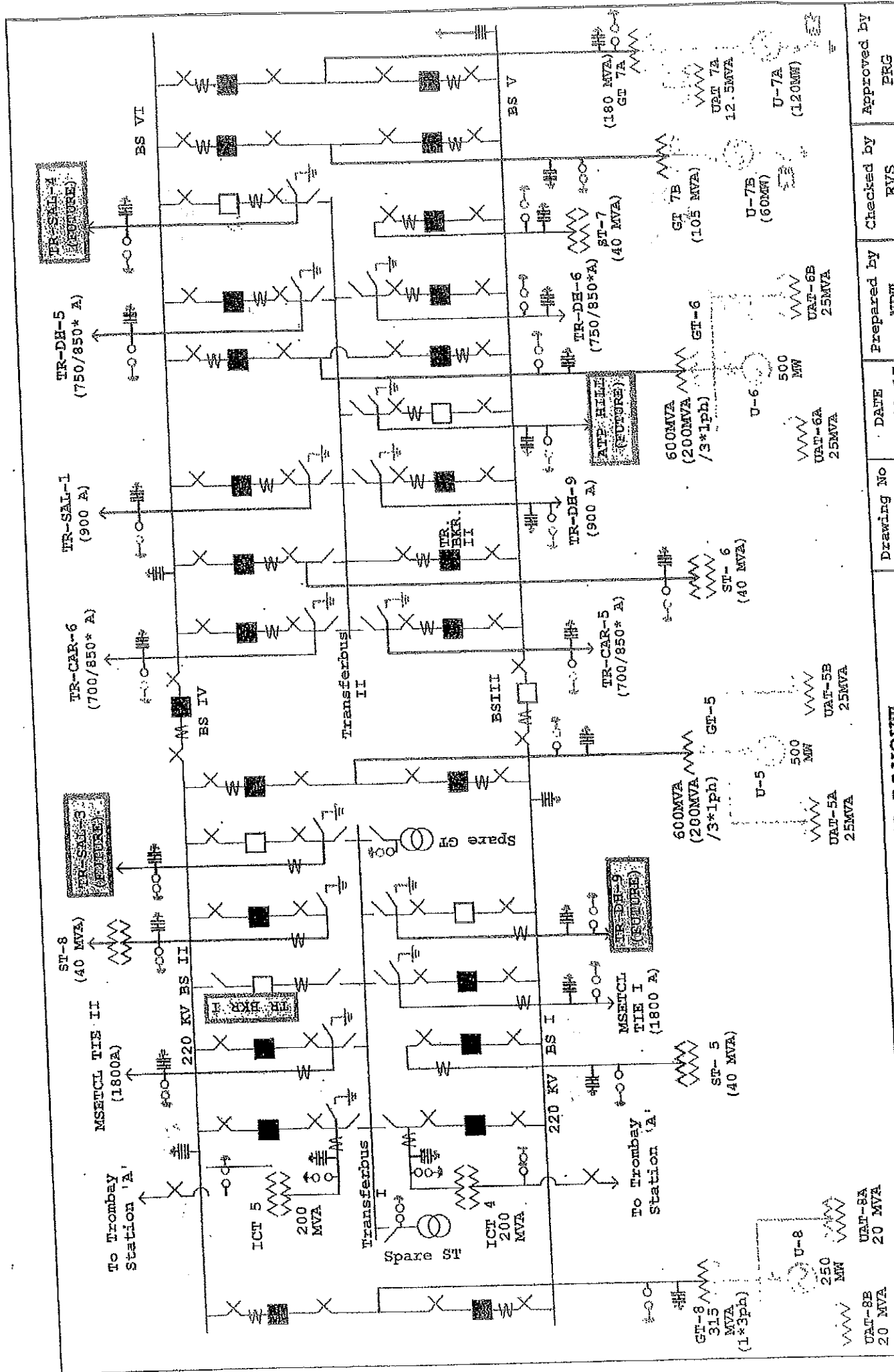




THE TATA POWER COMPANY LIMITED
SAKI RECEIVING STATION
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DATE: 23-07-2017
PREPARED BY: Pavin Galkwad
CHECKED BY: D RAVIKUMAR
APPROVED BY: K R RAO



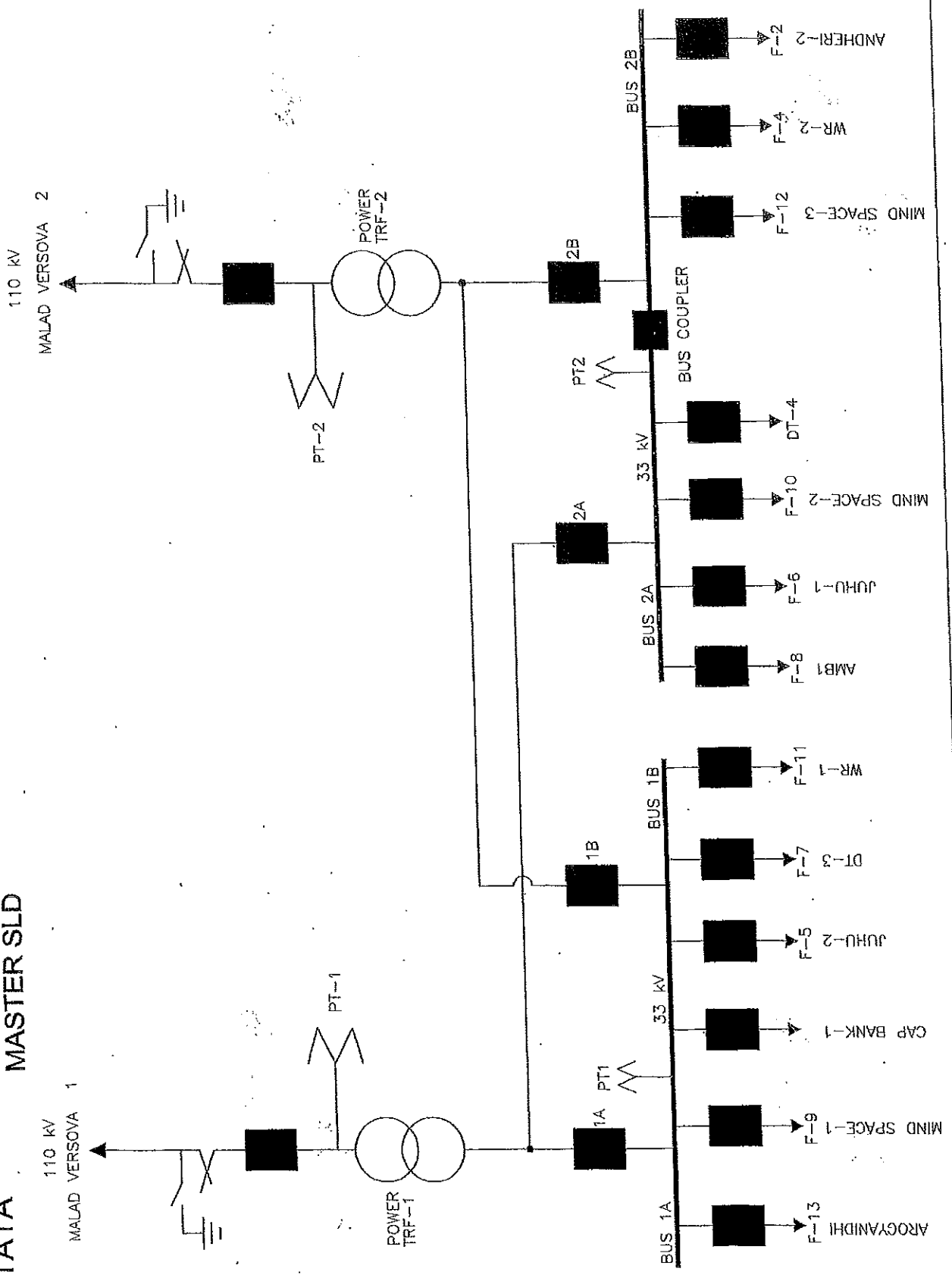


TATA POWER CO. LTD. PSCC	TROMBAY G/S 220KV LAYOUT			Drawing No	DATE	Prepared by	Checked by	Approved by
				49	01.01.17	NPT	RVS	PRG



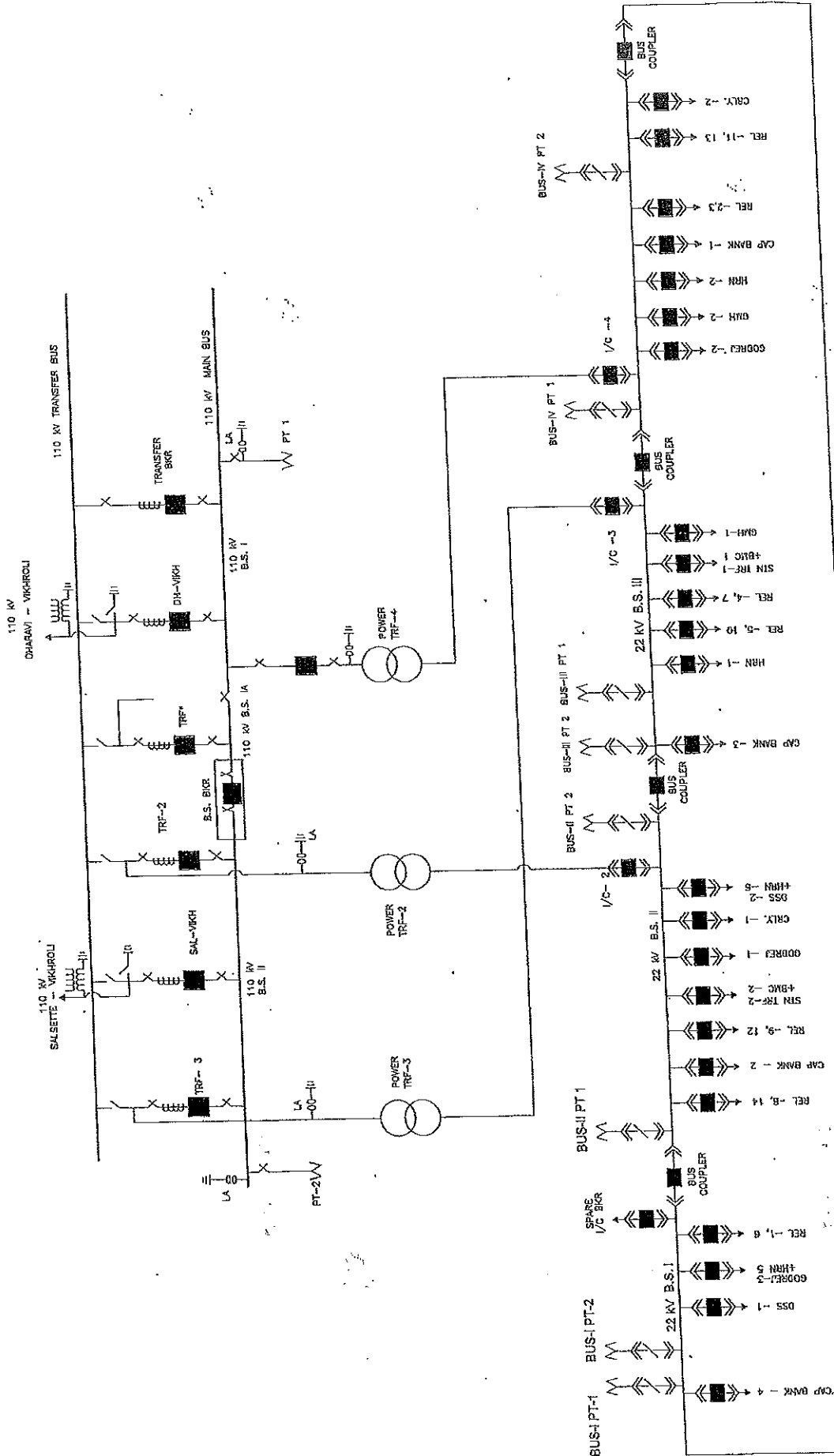
THE TATA POWER COMPANY LIMITED
VERSOVA RECEIVING STATION
MASTER SLD

DATE: 29-01-2017
PREPARED BY: Pravin Gaikwad
CHECKED BY: K.K.DATAR
APPROVED BY: K.K.RAO





THE TATA POWER COMPANY LIMITED
VIKHHROLI RECEIVING STATION
MASTER SLD



DATE: 29-01-2017 PREPARED BY: Pravin Gaikwad

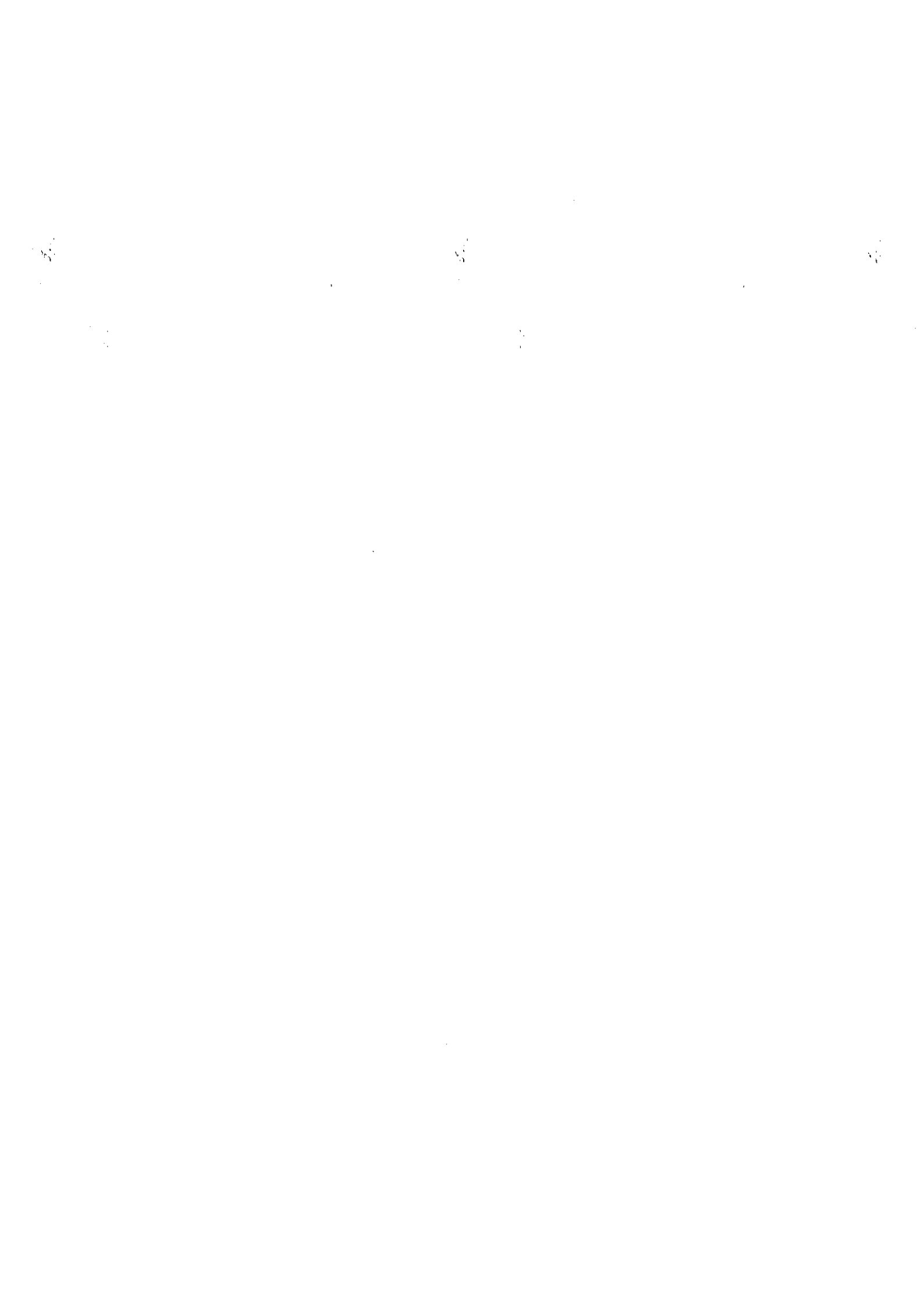
CHECKED BY: M.D. DMS
APPROVED BY: P.S. SAWANT

Annexure 5

The Tata Power company Limited - Transmission Business

Summary of Ammendment of Transmission Lines

Item No. as per "Existing list of Lines" in the Lic.	Line Name in short	Voltage Level	Existing length in present Trans. Licence	Length as per "Proposed List"	Addition/Reduction	Proposed length (km)
23	Saki - Narayan Industrial Estate (NIE) - Sahar	220	4.77	-	-4.77	-
67	Trombay Dharavi 2	110	10.36	-	-7.52	2.84
-	Khopoli-Bhivpuri Tie 2	110	28.00	-	28.94	28.94
-	Salsette Sahar	220	-	-	10.03	10.03
-	Salsette Saki	220	-	-	9.06	9.06
-	Dharavi-BKC 3	110	-	-	6.94	6.94
-	Dharavi-BKC 4	110	2.00	-	6.94	6.94
77.5	Trombay HPCL Feeder 1	110	1.90	-	-1.90	-
77.6	Trombay HPCL Feeder 2	110	1.90	-	-1.90	-
45.82						



Annexure 6

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Dated : 5th August, 2011

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson.
Hon'ble Mr. V.J. Talwar, Technical Member**

Appeal No. 171 of 2010

In the matter of:

West Electric Supply Company Ltd
N/1, 22 IRC Village, Nayapalli, Bhubneswar Appellant

Versus

1. Orissa Electricity Regulatory Commission
Vidyut Niyamak Bhawan
Unit VIII, Bhubaneswar.
2. OCL Iron and Steel Ltd
Vill: Lamloi. P.O. Garvana
Rajgangpur, Orissa
3. Grid Corporation of Orissa
Janpath. Bhubneswar.
4. OCL India Ltd.
Rajgangpur, Orissa

Respondents

Counsels for Appellant

Mr Suresh Tripathy

Counsels for Respondents

Mr Rutwik Panda

for (R 1)

Mr M G Ramachandran,
Mr R S Nanda,
Mr Ranbeer Singh
Mr Shaki Akhtar for (R 2)
Mr R B Sharma for (R 3)
Mr R M Patnaik for (R 4)

AND

Appeal No. 187 of 2010

In the matter of:

M/s. OCL Iron and Steel Ltd
Vill: Lamloi. P.O. Garvana
Rajgangpur, Orissa

Appellant

Versus

1. Orissa Electricity Regulatory Commission
Vidyut Niyamak Bhawan
Unit VIII, Bhubaneswar.
2. West Electric Supply Company Ltd
N/1, 22 IRC Village, Nayapalli, Bhubneswar
3. Grid Corporation of Orissa
Janpath. Bhubneswar.
4. OCL India Ltd.
Rajgangpur, Orissa

Respondents

Counsels for Appellant

Mr M G Ramachandran
Mr R S Nanda,

	Mr Ranbeer Singh	
	Mr Shaki Akhtar	
Counsels for Respondents	Mr Mr Rutwik Panda	for (R 1)
	Mr Suresh Tripathy	for (R 2)
	Mr R B Sharma	for (R 3)
	Mr R M Patnaik	for (R 4)

JUDGEMENT

Per Hon'ble Mr V. J. Talwar, Technical Member

1. In Appeal No. 171 of 2010, West Electric Supply Company (WESCO), a distribution licensee in the state of Orissa, is the Appellant. Orissa Electricity Regulatory Commission (State Commission) is the 1st Respondent. M/s OCL Iron and Steel Ltd (Steel Company) is the 2nd Respondent. GRIDCO is the 3rd Respondent and M/s OCL (Cement Company) is the 4th Respondent.
2. In Appeal No. 187 of 2010 M/s OCL Iron and Steel Ltd (Steel Company) is the Appellant. Orissa Electricity Regulatory Commission (State Commission) is the 1st Respondent.

WESCO, distribution licensee in Orissa is the 2nd Respondent. GRIDCO is the 3rd Respondent and M/s OCL (Cement Company) is the 4th Respondent.

3. These Appeals have been filed by the Appellants aggrieved by the Order dated 26.8.2010 passed by the State Commission. Since, the issues are the same, common judgment is being rendered in both the Appeals. For the sake of convenience, WESCO, the Appellant in Appeal No. 171 of 2010 who is the 2nd Respondent in Appeal No. 187 of 2010 is being referred to as the Appellant. M/s OCL Iron and Steel Ltd (Steel Company), the Respondent No. 2 in Appeal No. 171 of 2010 and the Appellant in Appeal No. 187 of 2010 is being referred to as the 2nd Respondent in the following paragraphs of this judgment.
4. The short facts are as under:
5. The 2nd Respondent, (Steel Company) has a Captive Generation Plant having installed capacity of 14 MW. It has surplus power of 4 MW. This surplus power was being supplied to 4th Respondent, M/s OCL India Ltd. (Cement Company)

through an independent 11 KV feeder. At the same time 4th Respondent (Cement Company) is also a consumer of the Appellant, WESCO having a Contracted Demand of 43.5 MVA availing power supply at 132 KV. Thus Cement Company sourced a portion of its power requirement from Steel Company and balance from the Appellant WESCO. The Appellant WESCO levied cross subsidy surcharge for power drawn by the 4th Respondent Cement Company from the 2nd Respondent Steel Company as an Open Access Consumer.

6. The 4th Respondent Cement Company had filed a petition before the State Commission being Case No. 10 of 2008 praying for direction to the Appellant, WESCO for not charging cross subsidy surcharge as it was a captive consumer. State Commission in its Order dated 1.12.2008 held that Cement Company was not a captive consumer and, therefore, was liable to pay cross subsidy surcharge to the Appellant WESCO as an Open Access consumer. This order of State Commission was challenged by the 4th Respondent Cement Company in

this Tribunal being Appeal no 20 of 2008. This Tribunal upheld the order of State Commission vide its Order dated 3.9.2009. The open access transaction was stopped on 07.09.2009 by 4th Respondent Cement Company.

7. In the meantime, State Commission in Case No.6-20 of 2009 dtd.30.06.2009 observed that '*GRIDCO should leave no stone unturned to mop up as much power as possible from all sources including Captive Generating Plants (CGP)*'. Similarly, State Commission further observed that "*individual CGP may sign agreement with GRIDCO or the DISCOMs covering the volume and duration of supply of firm power as may be mutually agreed upon.*"
8. In pursuance of this observation of the State Commission, 3rd Respondent GRIDCO signed a Power Purchase Agreement (PPA) with the 2nd Respondent Steel Company on 14.10.2009. It was proposed in the PPA that Captive Generation Plant (CGP) of 2nd Respondent Steel Company can supply power at 11 KV voltage level to the 3rd Respondent GRIDCO. This

power could be utilized by the 4th Respondent, Cement Company. The meter installed at premises of the 2nd Respondent Steel Company can be considered as billing meter by GRIDCO. Data Dump of this meter was required to be supplied to GRIDCO by the Appellant WESCO. PPA further provided that GRIDCO shall sell this power to the Appellant WESCO at Bulk Supply Tariff (BST). The Appellant WESCO shall bill 4th Respondent Cement Company at Retail Supply Tariff (RST) as per State Commission's prevalent Tariff Order.

9. Accordingly, it was sought that necessary arrangement be made to send the soft copy (on CD) of data dump of the energy meter installed at the premises of 2nd Respondent Steel Company every month to GRIDCO through the representative of Steel Company for verification at the Energy Billing Centre (EBC) of GRIDCO and processing the same for payment.
10. 4th Respondent Cement Company submitted a 'No Objection Certificate' confirming that it does not have any objection for

evacuation of power by 2nd Respondent Steel Company through its existing electrical system to GRIDCO.

11. On 30.10.2009 WESCO, the Appellant informed 3rd Respondent GRIDCO that since Cement Company is a consumer of WESCO and was receiving supply from CGP of Steel Company through Open Access earlier, WESCO was examining the matter from legal, technical and regulatory framework.
12. On 30.10.2009 GRIDCO intimated to WESCO that it would raise bulk supply bills on WESCO after deducting 0.5% from 11 KV metering data towards wheeling loss to equate the supplies at 33 KV to WESCO. GRIDCO in this letter opined that the payment of Open Access charges and transmission charges were not leviable as the supply was being supplied to WESCO only.
13. On 13.11.2009 GRIDCO instructed WESCO calling for immediate starting of transaction and that WESCO should cooperate with supplying dumped metering data to Steel

Company and should not insist on payment of cross-subsidy and wheeling charges. GRIDCO further stated that WESCO stands to gain out of transaction by getting power at Bulk Supply Purchase (BSP) rate and selling to Cement Company at Retail Supply Rate (RST) which includes some elements of cross subsidy.

14. On 01.12.2009, 2nd Respondent Steel Company filed a petition before State Commission calling for adjudication of disputes under Section 86 (1) (f) of the Electricity Act, 2003 relating to supply of surplus power from CGP of Steel Company to GRIDCO Ltd. at 11 KV through the 11 KV bus of Cement Company.
15. The Commission in its interim Order dated 16.12.2009 held that the dispute had arisen out of lack of proper communication between the parties. It further observed that in the acute power deficit situation in the State, it should be the endeavour of all the parties to utilize full available surplus power of CGPs. It advised GRIDCO to take immediate step for drawal of surplus

power of CGP to the State Grid and WESCO should provide necessary co-operation in this regard. It further opined that power should not be bottled up on technical reasons which can be sorted out latter.

16. The Commission decided to adopt an approach of conciliation and directed all the parties in the issue to settle the matter through mutual discussion and pending a final decision regarding commercial arrangement, the injection of surplus power of CGP of Steel Company to the State Grid would continue and commercial arrangement would be given effect to from the date of injection of surplus power.
17. Several rounds of discussions among the parties were held but parties could not reach a consensus.
18. After hearing the parties at length, the State Commission framed six issues to resolve. These issues along with crux of the State Commission's findings in its impugned order dated 26.8.2010 are as given below:

- I. **Issue 1:** Whether there is a dispute between the licensee and the generating company which can be adjudicated under Section 86 (1) (f) of the Electricity Act, 2003?

Findings: State Commission held that the injection of power from Steel Company to the state grid is amenable to the Regulation by the State Commission. When a licensee objects to the manner of injection of power by a captive generating plant, then it is certainly a dispute between a generating company and licensee in terms of Section 86(1)(f) of the Act. Accordingly, State Commission is certainly empowered to adjudicate this dispute as per Section 86 (1) (f) of Electricity Act, 2003."

- II. **Issue 2:** Whether the PPA between GRIDCO and Steel Company is binding on WESCO?

Findings: On this issue Steel Company as well as WESCO submitted before the State Commission that

the impugned PPA was a subject matter of a contract under Contract Act, therefore, beyond the scope of adjudication under the Electricity Act 2003. The State Commission held that nothing should be done contrary to established procedures of Law.

- III. **Issue 3:** Whether Cement Company India Ltd. is agreeable to this proposal of GRIDCO?

Findings: The State Commission held that the Cement Company had not given acceptance to the billing procedure provided in the PPA.

- IV. **Issue 4:** Whether the transaction between Cement Company and Steel Company shall always be through Open Access?

Findings: The State Commission held that the Steel Company and Cement Company are free to accept

any mode for transfer of power within the ambit of law.”

- V. **Issue 5:** What is the status of the 11Kv line between Cement Company (a consumer of DISCOM) and Steel Company a separate industrial unit, having its own generating company but not a consumer of DISCOM .Whether wheeling charge to DISCOM is payable or not?

Findings: The State Commission held that the subject 11 KV line along with associated system is a part of the distribution system of WESCO and it is entitled for wheeling charge for evacuation of surplus power from the CGP of Steel Company to the State Grid.

- VI. **Issue 6:** Whether there can be supply to a consumer at two voltage levels i.e. 132 KV and 11 KV levels?

Findings: The State Commission held that in the present case power to Cement Company can be

injected at both the voltage i.e. 132 KV and 11 KV so that residual power of CGP can be evacuated.”

19. Aggrieved by the State Commission's order, both the Appellant WESCO and the 2nd Respondent Steel Company have filed the present Appeals before this Tribunal.
20. Mr. Suresh Tripathy, the learned counsel for the Appellant urged a number of contentions which are as follows:
 - I. The sole purpose of this agreement was to frustrate the judgment of this Tribunal in Appeal No. 20 of 2008 dated 3.9.2009.
 - II. The agreement in question was entered into without taking the Appellant WESCO into confidence. The Appellant was neither a party to the said agreement nor was interested to become a party. Agreement that is contingent upon 'another person' agreeing to perform certain act and the said 'another person' does not agree to perform its act as sought for, is a contingent contract

and in view of the above, the agreement in question (PPA) is void.

- III. There was not a single correspondence with the Appellant either by the 2nd Respondent Steel Company or by the 3rd Respondent GRIDCO prior to the execution of the agreement. Nothing was demanded from the Appellant so as to be either repudiated or maintaining silence for bringing the petition at hand as a 'dispute'. Since there was no dispute, there was no occasion to determine. If at all there was a dispute, it was between 2nd Respondent Steel Company and 3rd Respondent GRIDCO to which the Appellant can't be dragged.
- IV. That agreement in question was to deprive the Appellant from its legitimate claim on account of cross subsidy and wheeling charges. Agreement was, therefore, unlawful since it was defeating the law and caused an injury to the Appellant.

V. That the agreement in question is otherwise bad in law as much as it violates the provisions of Section 43 of Electricity Act, 2003 and Clause 28 of the State Commission (Condition of Supply) Code, 2004. Section 43 of the Electricity Act emphasizes duty of licensee to supply electricity on request by the consumer. Since there is no request from 4th Respondent Cement Company to supply at 11 kV, there can't be any supply of power to it at 11kV. Similarly, Clause 28 of the State Commission (Condition of Supply) Code, 2004 stipulates that supply shall be at a single point at the outgoing terminals of the licensee. Therefore, supply of power is to be effected at a single point. In the absence of an application from 4th Respondent Cement Company to receive supply at 11 KV, WESCO cannot provide the same at it would in violation of the provisions of Section 43 and Clause 28 stated above.

- VI. That State Commission's direction in the impugned order to supply power at 11 kV but charge the same at EHT rate is against the Commission's own Tariff Order and against Section 62 (3) of the 2003 Act. If the proposed arrangement is ultimately allowed, then such sale to Cement Company would have to be at HV rate prescribed in Commission's tariff order and not at EHV rate.
- VII. That the 11 kV line in question is very much part of distribution system of the Appellant in terms of Section 2 (19) of the Act read with Rule 4 of Electricity Rules 2005.
- VIII. That both the 2nd Respondent Steel Company and 3rd Respondent GRIDCO had accepted the fact that the line in question belonged to the Appellant WESCO as evident from clause 2 of the Agreement.
- IX. That the 2nd Respondent had prayed, in petition no. 139 of 2009 filed by the 2nd respondent before the State Commission, for direction to the Appellant to give immediate clearance for usage of 11 kV line

21. The very admission of 2nd Respondent Steel Company through its prayer that the Appellant's clearance was required has settled the matter that the line is part of its distribution system.
22. Mr. M G Ramachandran , the learned counsel for the 2nd Respondent (in Appeal no. 171) in refuting the above contentions raised by WESCO, submitted the following:
 - I. The said PPA was entered in pursuance of State Commission's order dated 30.6.2009 to mop up surplus power from CGP's in the state to mitigate acute power shortage.
 - II. The agreement was entered upon in pursuance of Commission's Order Dated 30.6.2009. The Appellant, being a regulated entity under Electricity Act 2003, is bound by the directions of the State Commission.
 - III. The Appellant was not entitled for any cross subsidy. Under proposed arrangement Steel Company would sell its surplus power to 3rd Respondent GRIDCO. GRIDCO

would sell it to WESCO at Bulk Supply Tariff. WESCO would sell it further to Cement Company at applicable Retail Supply Tariff. These are three independent sets of commercial transactions. This arrangement is exactly similar to any other existing arrangements where GRIDCO procure power from different sources and supplies to distribution licensees at Bulk Supply Tariff. Distribution licensee supplies power so received from GRIDCO to their consumers at applicable Retail Supply Tariff.

- IV. The 11 kV line in question had been constructed, operated and maintained by the 2nd Respondent itself. It is, therefore, a dedicated line in terms of Section 9 of the Electricity Act 2003. Since it is not a part of the distribution system, WESCO is not entitled for any wheeling charges.
23. The Mr R B Sharma, the Ld Counsel for GRDICO submitted that that earlier when power flow from Steel Company to

Cement Company was allowed under open access, though supply to cement Company was at two points, the Appellant had no objection as they were getting cross subsidy surcharge and wheeling charges. Now, technically the same arrangement is being objected to only because there would not be any cross subsidy.

24. In the light of rival contentions referred to above urged by the learned counsel for parties, following questions would arise for consideration:

- I. Whether the agreement between 3rd Respondent GRIDCO and 2nd Respondent Steel Company dated 14.10.2008 was a valid agreement especially in view of this Tribunal's Order dated 3.9.2008 in Appeal No.20 of 2008.
- II. Whether agreement between GRIDCO and Steel Company is binding on the Appellant, particularly when it was not party to such an agreement.

- III. Whether State Commission has jurisdiction under Section 86 (1) of Electricity Act 2003 to adjudicate in the dispute.
- IV. Whether the Appellant is entitled for Cross subsidy even under the arrangement suggested by the State Commission.
- V. Whether supply at more than one point is permissible under Electricity Act 2003 or Regulations framed there under.
- VI. Whether the State Commission can direct the licensee to charge certain consumer at the rate different from the applicable rate as per prevalent tariff order.
- VII. Whether the 11 kV feeder between Steel Company and Cement Company is a dedicated transmission line in terms of Section 9 of the Electricity Act 2003 or is a part of Distribution System of distribution licensee in terms of Section 2(16) of the Act.

VIII. Whether the Appellant is entitled for any wheeling charges from 2nd Respondent for wheeling its power over 11 kV line in question here.

25. We shall now deal with each question one by one.
26. First question to be decided as to whether the agreement between 3rd Respondent GRIDCO and 2nd Respondent Steel Company dated 14.10.2008 was a valid agreement especially in view of this Tribunal's Order dated 3.9.2008 in Appeal No.20 of 2008.
27. Ld Counsel for the Appellant WESCO has argued that the sole purpose of this agreement was to frustrate the judgment of this Tribunal in Appeal No. 20 of 2008 dated 3.9.200.
28. Ld. Counsel for 2nd Respondent Steel Company denied this and submitted that the said agreement was entered into in pursuance of State Commission's order dated 30.6.2008 to mop up surplus power from CGP's in the state to mitigate acute power shortage.

29. We fail to appreciate the stand taken by the Appellant. In our opinion, the application of this Tribunal's Order in appeal, no. 20 of 2008 had effect only till Steel Company supplied power to Cement Company under open access mode i.e. on that particular transaction. It ceased to have any effect the moment the above arrangement was discontinued by the Cement Company on 7.9.2009. It would have been operative only if Steel Company supplied power directly to Cement Company under open access.
30. Next question for our consideration as to whether agreement between GRIDCO and Steel Company is binding on WESCO, the Appellant. Particularly when it was not a party to such an agreement?
31. Ld Counsel for the Appellant argued that the agreement in question was entered into without taking WESCO into confidence. Agreement that is contingent upon 'another person' agreeing to perform certain act and said 'another person' does not agree to perform its act as sought for is a

contingent contract and in view of the above, the agreement in question (PPA) is void.

32. On the other hand, Ld. Counsel for the Steel Company 2nd Respondent vehemently opposed the contention of the Appellant and submitted that the agreement was entered into in pursuance of Commission's Order Dated 30.6.2009, and WESCO, the Appellant, being a regulated entity under Electricity Act 2003, is bound by the directions of the State Commission.

33. It would be pertinent to examine the State Commission's concluding findings and directive in impugned order which read as under:

*“Orissa is undergoing a severe power shortfall in the current year. There should not be any impediment for maximization of all available resources and all effort should be made for evacuation of surplus power of CGP to the grid. The Commission will fail in discharging its statutory function if a viable commercial arrangement for power evacuation is not imposed on all the parties forthwith. **Therefore, we direct that GRIDCO, WESCO, Steel Company and Cement Company must sign a***

Quadripartite Agreement mentioning all technical and commercial details in such a way that surplus power of Steel Company shall be procured by GRIDCO and shall be sold to WESCO at the BSP rate. WESCO shall sell it to Cement Company at the Retail Supply Tariff of EHT category.” {emphasis added}

34. From the above observations of the State Commission, it is obvious that the State Commission had annulled the disputed agreement and directed the concerned parties to enter in to fresh Quadripartite Agreement mentioning all technical and commercial details etc. In our considered opinion, the State Commission had adopted correct approach and hence it need not be interfered with.
35. Next question for our consideration as to Whether State Commission has jurisdiction under Section 86 (1) of Electricity Act 2003 to adjudicate upon the dispute?
36. In view of directions issued by the State Commission to enter in to fresh agreement as discussed above, this issue has become irrelevant.

37. Next question for our consideration as to whether the Appellant is entitled for Cross subsidy even under the arrangement suggested by the State Commission?
38. WESCO has claimed that its interest would suffer as much as it has been denied of cross subsidy which it was entitled under old arrangement.
39. On the other hand Steel Company has submitted that WESCO would be supplying electricity to 4th Respondent Cement Company at RST, which includes an element of cross subsidy.
40. Let us examine this issue in detail.
41. The components of retail tariff are:
- I. **Average Power Purchase Costs**
 - II. **Transmission Charges** including
 - a) Intrastate transmission charges
 - b) Interstate transmission charges
 - c) SLDC Charges
 - d) RLDC Charges
 - III. **Distribution Charges** including
 - a) Depreciation
 - b) RoE
 - c) Interest on Loan
 - d) Interest on Working Capital
 - e) O&M Charges
 - Employees Cost
 - A&G Expenditure

R&M Expenditure

IV. Cross subsidy

Positive for subsidizing

Negative for subsidized

42. The Sum of charges at (i), (ii) and (iii) above constitutes Annual Revenue Requirement (ARR) of the distribution licensee. Average Cost of Service (CoS) is determined by dividing ARR by total sale to all categories.

$$\text{Average Cost of supply} = \frac{\text{Annual Revenue Requirement}}{\text{Total Sale by licensee}}$$

43. Effective Tariff for particular category is evaluated by dividing total revenue expected to be received from that category divided by total sale to that category.

$$\text{Effective Tariff for category} = \frac{\text{Total Revenue expected from category}}{\text{Total Sale to that category}}$$

44. Cross subsidy surcharge for a particular category is the difference between average cost of supply and effective tariff for that category as determined above.

45. All of the above charges, including cross subsidy surcharge, are built in the Retail Supply Tariff (RST) of embedded consumer of distribution licensee.
46. From the above discussion, it would emerge that distribution licensee's interests are fully covered if he gets all the components of retail tariff. In the present case WESCO, the Appellant, would be supplying electricity to the Cement Company at Retail Supply Tariff (RST) which includes cross subsidy component. Therefore, the Appellant would not be entitled for any additional cross subsidy surcharge as claimed by him.
47. Next question before us for consideration as to whether supply at more than one point is permissible under Electricity Act 2003 or Regulations framed there under.
48. The Ld Counsel for GRIDCO submitted that earlier when power flow from Steel Company to Cement Company was allowed under open access, though supply to cement Company was at two points, the Appellant had no objection as

they were getting cross subsidy surcharge and wheeling charges but now, technically the same arrangement is being objected to only because there would not be any cross subsidy.

49. In our opinion the submission made by GRDICO is not factually correct. It is true that Cement Company was getting supply at two points under open access. But under that arrangement there were two distinct commercial arrangements. Whereas the supply at 132 kV was released as a consumer under Section 43 of the Act, the supply at 11 kV was under open access on payment of cross subsidy & wheeling charges. However, there would be only one commercial arrangement under the proposed arrangement. Consumption at both the points will have to be added and billed as single consumption at EHT tariff. Moreover Maximum Demand (MD) recorded at 15 minutes interval by both meters will have to be added to arrive at simultaneous maximum demand of Cement Company during the billing period. Thus

both connections i.e. at 132 kV and 11 kV are to be treated as single connection. The Appellant had submitted that it would have no objection in treating the two connections independent of each other. Consumption at 132 kV to be billed at EHV rate and consumption at 3.3 kV to be billed at HT rate.

50. In the light of above, let us examine the Regulation 28 of State Commission's Supply Code. Regulation 28 of Supply Code provide as under:

"Unless otherwise agreed to, the supply shall be at a single point at the out-going terminals of the licensee, i.e.....,"

51. In terms of this regulation, supply has to be made at a single point unless agreed to by supplier and consumer. In the present case supplier WESCO has in fact objected to give supply at more than one point. In order to remove stalemate, the State Commission had invoked Power to remove difficulties provided under Regulation 112 of its Supply Code. It is reproduced below:

“Power to remove difficulties

112. If any difficulty arises in giving effect to any of the provisions of these Regulations, the matter may be referred to the Commission who after consulting the parties affected may pass any general or special order, not inconsistent with the provisions of the Act, which appears to it to be necessary or expedient, for the purpose of removing the difficulty.”

52. From the above, it is clear that State Commission has power to remove the difficulties. However, this power can be invoked upon being referred to and also after consulting the parties affected. The Appellant in its Appeal has submitted that invoking Regulation 112 of Supply Code by the State Commission was wholly improper and uncalled for on following grounds:

- a. No difficulty had arisen for giving effect to Clause 28.
- b. Neither the Appellant nor Cement Company had referred the case to the Commission as required under Regulation 112.
- c. Appellant was never consulted by the State Commission as required under Regulation 112.

53. In the light of above, we are of the view that State Commission has not followed its own Regulations. The State Commission could have directed the Appellant that supply to 4th Respondent OCL at 11 kV could be treated as a separate connection. With such an arrangement the overall objective of mopping up surplus power available within the state would have been achieved without violating any provision of the Act or Regulations.
54. Next issue before us is as to whether the State Commission can direct the licensee to charge certain consumer at a rate different from applicable rate as per prevalent tariff order.
55. The Appellant has submitted that the State Commission's direction in the impugned order to supply power to the Cement Company at 11 kV but charge the same at EHT rate is against the Commission's own Tariff Order and against the provisions of Section 62 (3) of the Electricity Act 2003. If the proposed arrangement is ultimately allowed, then such sale to Cement Company would have to be at HV rate prescribed in

Commission's tariff order and not at EHV rate as directed by the Central Commission in impugned order

56. On perusal of records available with us, it appears that the issue was not raised before the State Commission. The State Commission has given this direction in the impugned order.

The relevant portion of impugned order is reproduced below:

“The sale to OCL at 11 KV shall be treated as EHT sales of WESCO and load factor for billing shall be calculated accordingly. The present contract demand of OCL shall continue unless OCL requests for a change. As maximum demand of 4 MW at 11 KV side shall have negligible impact in comparison to 43.5 MVA contract demand of OCL, we direct that simultaneous maximum demand shall be calculated by arithmetic sum of 132 KV and 11 KV maximum demand indicator through time synchronization of both the apex meters. The transformation loss at OCL end, shall be computed as 0.5% of the energy input.” {Emphasis Added}

57. Since the Appellant has raised the legality of the State Commission's direction on application of EHT rate on supply serviced at 11 kV i.e. HT level, we deem it appropriate to examine and dispose this issue on merits.

58. Let us examine the provisions of Section 62 (3) of 2003 Act which reads as under:

*“62 (3) **The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity** but may differentiate according to the consumer’s load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.” {Emphasis supplied}*

59. Bare reading of this Section would imply that the Act does not permit the Appropriate Commission to show undue preference to any consumer. However, the Commission may differentiate the tariff based on certain parameters defined in the Section itself. Voltage is one of such parameters. The Appropriate Commission may fix different rates of tariff for consumers drawing power at different voltages say at 11 kV and 132 kV. But the Act does not permit the State Commission to direct the distribution licensee to charge tariff from a particular consumer

at rate other than the rate for specified for similarly placed consumers.

60. Since supply to the Cement Company from surplus of power of Steel Company would be at 11 kV, application of EHT tariff, even after adjustment of 0.5% towards transformation losses, would amount to undue preference to Cement Company by the State Commission as well as would amount to discrimination against similarly placed consumers.
61. However, as the issue was not raised at the State Commission level, we give liberty to the Appellant to raise the issue with the State Commission at the appropriate stage.
62. Next question for our consideration as to whether 11 kV feeder between Steel Company and Cement Company is a dedicated transmission line in terms of Section 9 of the Electricity Act 2003 or is a part of Distribution System of distribution licensee in terms of Section 2(16) of the Act?
63. The Appellant, WESCO has argued that as per provisions of Section 2(16) read with Rule 4 Electricity Rule 2005, the line in

question is a part of its distribution system. On the other hand Ld Counsel for the Respondent No.2 stoutly opposed the contention of the Appellant and submitted that 11 kV line is a dedicated transmission line in terms of Section 9 of Electricity Act 2003.

64. In order to appreciate the point at issue, it will be necessary to set out the relevant provisions of the Act and Rules and Regulations made there under along with the findings of the State Commission.
65. Findings of the State Commission on this issue are quoted below:

“(e) Now, let us examine the basic crux of the issue i.e. the status of the 11 KV line between Cement Company (a consumer of DISCOM) and CGP of Steel Company. For a proper appreciation of the issue involved, it is required to look into the history of the case. Initially the Cement Company, OSIL and CGP were a single entity called Cement Company having 132 KV connectivity with the State Grid. The 11 KV interconnection between its Cement Unit with Steel Unit having a CGP was constructed, maintained and operated by them. Due to a de-merger at the company level the Cement Unit (

Cement Company) having connectivity at 132 KV with State Grid remained as consumer of DISCOM and the Steel Unit with CGP remained as a separate independent entity. The 11 KV interconnection continued to remain in service mostly in floating condition so that CGP could run in a synchronism state with the Grid as well as to draw occasional emergency supply from the Grid.

In the case No.20 of 2008, the Commission, while adjudicating the case of surplus power transfer between CGP of Steel Company to Cement Company, has observed that the 11 KV dedicated line between the two companies for the purpose of power transaction should be treated as a deemed distribution system of the DISCOM and, therefore, the transaction will fall under Open Access power transfer category. Hence, the DISCOM is entitled for cross-subsidy charges and other charges, as applicable for open access. The order of the Commission is upheld by ATE.

We, therefore, reiterate our view that even though the 11 KV line is constructed, maintained by the Steel Company, for the subject transaction as narrated above the 11 kV line shall be treated as deemed distribution system of the DISCOM.

We have noted the argument of the learned counsel that as per Section 9(1) of the Electricity Act, 2003, that any person may construct, maintain or operate Generating Plant including CGP and dedicated transmission line. The 11 KV line between Steel Company and Cement Company should, therefore, be treated as a dedicated

transmission line of CGP of Steel Company and, therefore, transmission /wheeling of power through this 11 kV line shall not attract any transmission or wheeling charges as are applicable for the DISCOM's distribution system. We agree with the contention of the learned Counsel that a Generating Company may construct, maintain and operate a transmission line as per the law but we hold the view that such a Generating Company should terminate its line with due permission at the Sub-station of either a Transmission Utility or a Distribution Utility for evacuation of power either to a State or Central Grid. It cannot terminate its line at the internal 11 KV supply system of a consumer of DISCOM (having CD with DISCOM at 132KV). And, therefore, for the sole purpose of evacuation of its power to the State Grid it cannot claim the right to evacuation without consent of DISCOM and without paying legitimate charge of DISCOM. The subject 11KV line is remaining in service due to past legacy and keeping the line in a charged condition is necessary mainly in the interest of the CGP of M/s. Steel Company to run the CGP unit duly synchronised with the Grid. M/s. Cement Company has no objection to continue the 11KV line in a floating condition, even though it has no intention to draw power from the CGP through Open Access. However, if the CGP wants to evacuate its surplus power to the State Grid through the above line, it need to first evacuate the power through the DISCOM at 11KV and DISCOM in turn is deemed to have drawn equivalent power from State Grid at 132 KV level for supplying to its consumer i.e. M/s. Cement Company. **Therefore, the subject 11KV line along with associated system shall**

be deemed to be a part of the distribution system of WESCO. The DISCOM - WESCO is entitled for wheeling charge, and 0.5% agreed transmission/transformation loss for the purpose of surplus power evacuation by the CGP of Steel Company to the State Grid- GRIDCO. We do not find any justification to deviate from our stated stand that wheeling charge is payable to the DISCOM.” {emphasis added}

66. From the above findings, it is clear that the State Commission has held that line in question is a part of distribution system of distribution licensee.

67. Let us now examine the various provisions of the Electricity Act 2003 to determine the status of line in question.

68. Distribution System has been defined in Section 2(19) of the Act and is reproduced below:

*“(19) “distribution system” means the system of wires and associated facilities **between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;**” {emphasis added}*

69. Distribution system has further been elaborated in Rule 4 of Electricity Rules 2005 as under:

“4. Distribution system.—The distribution system of a distribution licensee in terms of sub-Section (19) of Section 2 of the Act shall also include electric line, sub-station and electrical plant that are primarily maintained for the purpose of distributing electricity in the area of supply of such distribution licensee notwithstanding that such line, sub-station or electrical plant are high pressure cables or overhead lines or associated with such high pressure cables or overhead lines; or used incidentally for the purposes of transmitting electricity for others”.

70. Conjoint reading of these two provisions would suggest that the aforesaid line is a part of distribution system as it is connected between generating station (Steel Company) and point of connection to the installation of consumer (Cement Company).
71. Sh M G Ramachandran Ld counsel of the 2nd Respondent Steel Company emphatically submitted that the line in question is part of distribution system of Steel Company but not that of distribution licensee.

72. We would now examine and decide the issue before us based on the provisions of the Electricity Act 2003 and Regulations made under therein.
73. As per definition given in Section 2(19) of the Act read with Rule 4 of Electricity Rules 2005, the Distribution system is set of wires and lines etc. primarily used for distribution of power. Only distribution licensee who has been issued license by the Appropriate Commission under Section 14 of the Act or person who has been exempted to obtain such license under Section 13 of the Act can distribute power under the Act. Steel Company is neither a distribution licensee nor had been exempted from obtaining a license. Thus it cannot own a distribution system.
74. Admittedly Steel Company is a Captive Generating Plant (CGP). A CGP can construct, maintain and operate a dedicated transmission line under Section 9 of the Act which is reproduced below:

“9. Captive generation.—(1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines.”

75. Dedicated transmission line has been defined in Section 2(16)

as reproduced below:

“(16) “dedicated transmission lines” means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in Section 9 or generating station referred to in Section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be;”

76. Thus Steel Company being a Captive Generating Plant can own maintain and operate a dedicated transmission line only and not a distribution system. The line in question connects electric plant of CGP of Steel Company to premises of Cement Company, a consumer of the Appellant, WESCO. It does not fit in to the definition of dedicated transmission line.

77. Therefore the line in question is part of distribution system of distribution licensee i.e. WESCO.

78. The Respondent No 2, the Steel Company claimed that the line had been constructed by it at its own cost and therefore, the line belongs to them. On the other hand, WESCO claims that the line is part of its distribution system.

79. In order to resolve this issue we would refer to the provisions of the Electricity Act 2003 and the State Commission's Supply Code.

80. Section 46 of Electricity Act 2003 empowers the Distribution Licensee to recover expenditure reasonably incurred in providing any electric line or electrical plant in accordance with the Regulations framed by the State Commission. Section 46 of the Act is reproduced below:

“46. Power to recover expenditure.—The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.”

81. The State Commission has framed Distribution Supply Code incorporating the provision of Section 46 of the Act. Clause 27

of State Commission's Supply Code provides that the entire service line, irrespective of who has paid the cost of such service line, shall be the property of the licensee. Clause 27 of Supply Code is reproduced below:

“27. The entire service line, notwithstanding that whole or portion thereof has been paid for by the consumer, shall be the property of the licensee and shall be maintained by the licensee who shall always have the right to use it for the supply of energy to any other person unless the line has been provided for the exclusive use of the consumer through any arrangement agreed to in writing.”

82. Section 46 of the Act authorise any distribution licensee to recover the cost incurred in providing electric line in persuasion of supply to a consumer. It could be a LT line or HT line, depending upon quantum of load requirement of consumer. State Commission have, through Regulations viz., Distribution Supply Code, provided that the said line could be laid by Distribution Licensee or by Consumer himself. In case line is laid by licensee, he would be entitled to recover the cost of the

same as per provisions of the Regulations. Thus in both cases, whether the line is constructed by the consumer or by the licensee, cost of the line has to be borne by the consumer.

83. Thus the 11 kV line in question is the property of Distribution licensee as per section 46 of the Act read with Clause 27 of the Supply Code.
84. In view of above discussions we conclude that the 11 kV line from CGP of the 2nd Respondent, Steel Company to premises of the Cement Company is part of distribution system of distribution licensee i.e. the Appellant WESCO.
85. Next issue to be decided is whether distribution licensee is entitled for wheeling charges for utilization of its distribution system.
86. Wheeling has been defined in Section 2(76) of the Electricity Act 2003 and is quoted below:

*“(76) “wheeling” means the operation whereby the **distribution system and associated facilities of a transmission licensee or distribution licensee**, as the case may be, are used by another person for the*

conveyance of electricity on payment of charges to be determined under Section 62;”

87. From the above definition it is clear that wheeling would involve three ingredients viz.,

- I. Usage of distribution system of distribution licensee,
- II. Such usage has to be by another person
- III. Usage can be only on payment of charges.

88. The line is question is distribution system of the Appellant WESCO. As per impugned order of the State Commission, the Respondent Steel Company would be selling its surplus power to GRIDCO and metering would be done at receiving end i.e. at Cement Company. Thus transfer of power from Steel Company to GRIDCO would take place at Cement Company's installations. Till power is transferred to GRIDCO it remains with the 2nd Respondent Steel Company and therefore another person in terms of Section 2 (76) of the Act would be the Steel Company. Steel Company would be liable to pay wheeling charges for usage of the Appellant WESCO's distribution

network in line with the state Commission's Order dated 26.8.2010.

89. Therefore, we are of the view that the 2nd Respondent Steel Company is liable to pay the wheeling charges for usage of this line for export of its power to GRIDCO.

90. Summary of our findings:

- I. **We fail to appreciate the stand taken by the Appellant that the purpose of the Agreement is to frustrate the judgment of the Tribunal. In our opinion the application of this Tribunal's judgment in appeal no. 20 of 2008 had effect only till Steel Company supplied power to Cement Company under open access mode i.e. on that particular transaction. It ceased to have any effect the moment the above arrangement was discontinued by the Cement Company on 7.9.2009. It would have been operative only if Steel Company supplied power directly to Cement Company under open access.**

- II. **The State Commission had annulled the disputed agreement and directed the concerned parties to enter in to fresh Quadripartite Agreement mentioning all technical and commercial details etc. In our considered opinion, the State Commission had adopted correct approach.**
- III. **The distribution licensee's interests are fully covered if he gets all the components of retail tariff. In the present case WESCO, the Appellant, would be supplying electricity to the Cement Company at Retail Supply Tariff (RST) which includes cross subsidy component. Therefore, the Appellant would not be entitled for any additional cross subsidy surcharge as claimed by him.**
- IV. **We are of the view that State Commission has not followed its own Regulations. The State Commission could have directed that supply to OCL at 11 kV could be given as a separate connection.**

- V. Since supply to the Cement Company from surplus of power of Steel Company would be at 11 kV, application of EHT tariff would amount to undue preference to Cement Company by the State Commission and would amount to discrimination against similarly placed consumers. However, as the issue was not raised at State Commission level and also not during hearings before this Tribunal, we give liberty to the Appellant to take the issue with the State Commission at the appropriate stage.
- VI. The 11 kV line from CGP of the 2nd Respondent, Steel Company to premises of the Cement Company is part of distribution system of distribution licensee i.e. the Appellant WESCO.
- VII. The 2nd Respondent Steel Company is liable to pay the wheeling charges for usage of this line for export of its power to GRIDCO.

91. In view of our above findings, we do not find any ground to interfere with the impugned order of Orissa Electricity Regulatory Commission dated 26.8.2010. Hence, both the Appeals being devoid of merits are dismissed. However, there is no order as to cost.
92. Pronounced in the open court today the 5th August, 2011.

(V J Talwar)

(Justice M Karpaga Vinayagam)

Technical Member

Chairperson

INDEX: REPORTABLE/~~NON-REPORTABLE~~

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 30 of 2012

Dated: 14th December, 2012

Present: HON'BLE MR. JUSTICE PARTHA SAKHA DATTA, JUDICIAL MEMBER
HON'BLE MR. V J TALWAR, TECHNICAL MEMBER,

IN THE MATTER OF:

Orissa Power Transmission Corporation Limited
Janpath, Bhubaneswar, Orissa

.... Appellant

Versus

1. **Orissa Electricity Regulatory Commission** Respondent(s)
Bidyut Niyamak Bhawan, Unit-VIII
Bhubaneswar -751012, Orissa
2. **Industrial Promotion & Investment Corporation of Orissa**
IPICOL House, Janpath
Bhubaneswar
3. **GRIDCO Limited,**
Janpath, Bhubaneswar
4. **North Eastern Electricity Supply Company of Orissa Ltd.**
Regd. Office Plot No.N/22, IRC Village
Nayapalli, Bhubaneswar – 751015, Orissa
5. **Central Electricity Supply Utility of Orissa (CESU)**
Regd. Office – 2nd Floor, IDCO Tower
Janpath, Bhubaneswar – 751 022, Orissa
6. **Southern Electricity Supply Company of Orissa Ltd.**
Regd. Office Plot No.N/22, IRC Village
Nayapalli
Bhubaneswar – 751015, Orissa

- 7 **Western Electricity Supply Company of Orissa Limited**
Regd. Office – Plot No.N/22, IRC Village, Nayapalli
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- 8 **M/s Project Development Consultants**
F/6, BJB Nagar,
Bhubaneswar
- 9 **M/s Hind Metals and Industries Limited,**
Canal Road, Kandasar
Nelco Nagar, Angul, Orissa
- 10 **Rawmet Ferrous Industries Limited**
2 B Fortune Towers, Chandrasekharpur
Bhubaneswar

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Mr. Antaryami Upadhyay
Mr. David A.

Counsel for the Respondent(s): Mr. B K Nayak
Rutwik Panda for R-1
Mr M G Ramachandran for R-10
Mr R M Patnaik
Mr Dhananjaya Mishra
Mr P P Mohanty
Ms. M Sarada for R-5

JUDGMENT

PER MR. V J TALWAR TECHNICAL MEMBER

1. The Appellant, Orissa Power Transmission Corporation Limited (Appellant) is a wholly owned company of the Government of Orissa and has been notified as State Transmission Utility by the State Government under Section 39 of Electricity Act 2003 and a deemed transmission licensee.

2. Orissa Electricity Regulatory Commission (Commission) is the first Respondent. Respondent - 3 GRIDCO is a trading licensee in the state of Orissa. Respondent number 4 to 7 are the distribution licensees in the state of Orissa. Respondent number 8 to 10 are EHT consumers.
3. This Appeal has been filed by the Appellant challenging the Orders dated 22.7.2006 passed in Case No. 36 of 2005 and Review Order 26.4.2011 passed in Case No. 63 of 2006 by the Orissa Electricity Regulatory Commission (Commission).
4. The facts of the case are briefly described below:
5. The Commission initiated suo-moto proceedings being Case No. 36 of 2005 pursuant to performance review of the Distribution Licensees. In these proceedings all the stake holders of the power sector of Orissa were made parties. The Commission disposed of the petition by an order dated 22.7.2006 with following directions:

"26. OPTCL is the licensee for transmission and possess expertise in the field of transmission. The feeders emanating from the grid substations upto the consumer premises for the EHT consumer can be treated as an exclusive feeder. The recovery of cost constructed by the OPTCL can be done by following the remunerative norms from the revenue generation through levy of transmission charge. Yardstick shall have to be applied for investment in transmission so that where the scheme is non-remunerative, a portion of investment has to be borne by the customer.

27. The Commission had already prescribed a procedure through Regulation for determination of remunerative norms for distribution network. The same concept can mutatis mutandis be applied for creation of transmission network.

28. These EHT feeders constitute a part and parcel of the EHT transmission line which has to be built, owned and operated by the OPTCL to ensure optimal utilization of the generation and

transmission asset. To avoid delay in construction by the transmission licensee, the prospective consumer can construct a line on behalf of OPTCL and handover the same to OPTCL perpetually and in such an instance, the OPTCL shall be entitled only to the supervision charge of 6% of the gross estimate. The point of interface between OPTCL and the distribution licensee shall be the point of interconnection at the EHT consumer premises. Following the remunerative norms any expenditure incurred by the prospective consumer on behalf of OPTCL can be reimbursed by OPTCL through energy bill to be served by the concerned DISTCOs through mutual agreement.

“29. The Commission finds no justification for collection of Rs.10 lakh per MW from the prospective consumer for construction of lines and s/s upto the load centre to be developed by OPTCL after due regulatory approval which has to be financed by OPTCL following prudent financial practices. However, the Commission shall have no objection if prospective consumers come forward voluntarily for giving loan to the transmission company at the prevailing bank rate.”

6. The Appellant filed a Review Petition being Case No. 63 of 2006 for Review of the order dated 22.07.2006 with the following prayers:
- (i) to exempt OPTCL from the duties/responsibility for power supply to EHT consumers which falls under the domain of Distribution licensees;
 - (ii) to allow supervision charge @ 16% over the total project outlay in lieu of 6% allowed; and
 - (iii) to permit OPTCL to collect Rs.10 lakh/MW as infrastructure loan as is being collected to ensure commitment from and realistic assessment of power projection by the prospective EHT consumers till such time a mechanism is developed on cost sharing between DISTCOs/GRIDCO/OPTCL and approved by OERC.
7. The Commission disposed of the Review Petition by an order dated 26.04.2011 with the following directions:-

- (a) The power of review is not circumscribed or to be made only if there is a clerical mistake or error apparent on the face of the record. It can be exercised, if there are other sufficient reasons. In the instant case, there was need to bring out clarity and distinction with regard to supervision charges, infrastructure loan, remunerative cost analysis, load centre, role of DISCOMs, Transmission utility vis-à-vis the user of EHT lines. Hence, it called for a detailed review in order to remove the doubts and bring out clarity of role of DISCOMs, Transmission utility and the EHT user etc.
- b) Any obligation to supply of power to any prospective EHT consumer and all commercial dealings and/or contract demand revision of existing EHT consumers lies with DISCOM only. DISCOMs need to take up the necessary interaction with the Transmission licensee on behalf of the consumer as a part of its business obligation.
- c) All 132 KV and above lines/system (including dedicated EHT feeder) are part of the Transmission system. The practice of metering arrangement at the EHT consumer premises, at the cost of consumer, could be initiated for billing purpose as DISCOM's drawl from GRIDCO as well as DISCOM's billing to the consumer.
- d) After completion and successful charging of the dedicated feeder, the ownership of the EHT line/system should be handed over to M/s OPTCL on payment of the cost of the system at a reasonable basis. The consumer should be freed from further maintenance expenses and responsibility.
- e) The principle of remunerative calculation, which has been provided in the OERC Distribution (Condition of Supply) Code, 2004, for creation of distribution network, will also mutatis mutandis be applied for creation of transmission network.
- f) (i) In case dedicated EHT lines/system is constructed and charged by the 'User' itself, OPTCL is entitled for 6% supervision charge. Testing fee of Electrical Inspector is not included and this should be borne by the User as an additionality.
- (ii) In case the dedicated lines/system is designed, erected and commissioned by OPTCL on behalf of the User, then OPTCL shall charge 16% departmental charge (including testing fee of the

Electrical Inspector). The total capital cost including departmental charge payable by the User shall be approved by the Commission.

- g) The practice of asking for 'Infrastructure Loan' from any consumer's of DISCOM or from any generator for the dedicated feeder/dedicated transmission lines as a condition of connectivity agreement should stop from the date of the order. However, the infrastructure loan already taken or agreed to be taken on or before the date of this order will be governed/regulated as per the agreement already entered into and there is no question of any immediate refund of such infrastructure loan already taken/given.*
 - h) There should not be any question of adjustment of loan advance with the energy bill of the consumer, as the billing and payment of energy charges is between the consumer & the DISCOM and Transmission utility is not involved in the process.*
 - i) The 'remunerative cost' analysis be taken up immediately for any likely relief of the user for its capital investment on the dedicated feeder including the infrastructure loan paid by them to M/s. OPTCL".*
8. Aggrieved by some of the direction given in the Original Order dated 22.7.2006 and the Review order, the Appellant has filed this Appeal.
9. Assailing the directions given in the impugned Orders the learned Counsel for the Appellant made very elaborate submissions as listed here under:
- a) The Commission was not justified in giving directions on issues not raised by the Appellant in the Review Petition. The Commission has acted beyond its jurisdiction in giving direction related to supervision charges where line is erected and commissioned by the Appellant on behalf of the Consumer and completely stopping the practice of 'Infrastructure Loan' from the prospective consumer as a condition of connectivity.

- b) Since the obligation to supply electricity is of the Distribution Licensee, the corresponding obligation to construct EHT line upto the consumer premises is also of the Distribution Licensee. Having rightly held that the obligation to supply power is of the Distribution Licensee, the Commission erred in holding that responsibility of construction of EHT line should remain with the Transmission Licensee. These observations of the Commission are contrary to the Scheme of the Act.
- c) The Commission has erred in holding that the Remunerative Norms for creation of Distribution Network will apply "mutatis-mutandis" to Transmission Network.
- d) The only issue with regard to the Supervision Charges in the suo-moto order dated 22.07.2006 was in respect of Supervision Charges in respect of the work undertaken by the consumer under the Supervision of the Appellant and there was no reference in respect of work undertaken by the Appellant either in original suo-moto order dated 22.7.2006 or in the review petition. However, the Commission has given directions even with regard to Supervision Charges in respect of the work undertaken by the Appellant on behalf of consumer in the Review Order dated 24.06.2011. The said directions are without jurisdiction as the Commission does not have any suo-moto power of review.
- e) The Appellant being the transmission licensee and having expertise in the field of transmission, can undertake the construction and / or supervision of the construction of the EHT service lines of the consumer (whether being executed by the concerned DISTCO or by the consumer himself on behalf of

DISTCO) on payment of Supervision Charges in accordance with the provisions of Section 41 of the Act (Other business of transmission licensee).

- f) The Supervision Charges of 6% of the gross estimate as ordered by the Commission apparently in consonance with the Supervision Charges allowed to the DISCOMs for identical purpose is very meagre keeping in view the extent of work to be carried out by the OPTCL.
- g) After payment of Supervision charges and transfer of the line to the Appellant, the Consumer is freed from payment of any charges for maintenance of line for all times.
- h) The Commission has already considered the Supervision Charges collected by OPTCL as the miscellaneous income in the ARR of the Appellant and any interference would adversely affects the ARR of the Appellant.
- i) The Appellant OPTCL is short of funds for improvement / upgradation of the Transmission System. Even for availing loan from the financial institutions, corresponding equity is required. OPTCL being a Government Company has only limited equity and cannot, therefore, avail loans required for improvement / upgradation of the vast Transmission Network.
- j) In most cases, power supply to the industry is feasible from the nearest grid sub-station, but the connectivity conditions require upgradation at the upstream level like upgrading the auto-transformer capacity, conductor size etc. The funding for such upgradation work is partly met from the infrastructure loan amount.

- k) Most of the time, the industries project their power requirement over-ambitiously and thus request commitment for huge quantity of power. When the infrastructure loan condition is imposed, they drastically cut down their requirement and make realistic assessment of the power requirement.
10. The learned Counsels for the Commission and Respondent No. 5 and 10 made submissions supporting findings of the Commission.
11. Based on the rival contentions of the parties, the following questions would arise for our consideration:
- I. Whether the Commission has power to enlarge the scope of the Review Petition filed by the Appellant and giving the directions with regard to issues which were not the subject matter of the Review Petition?
 - II. Whether any of the directions given in the Impugned Review Order are not related to subject matter of the Review Petition?
 - III. Whether line connecting the transmission network of the Appellant and the consumer's premises (herein after referred to as last mile connection) is part of transmission network of distribution network of distribution licensee?
 - IV. Whether the scheme for sharing of service line expenditure on remunerative principles for distribution can be applied to the Appellant mutatis mutandis?
 - V. Whether the Commission has rightly fixed the supervision charges at 6% instead of 16% which had been collected by the Appellant?

- VI. Whether the Commission has rightly denied the Appellant to collect the "Infrastructure Loan" from prospective EHT consumers?
12. We shall now deal with each of the questions framed above one by one. The first question for consideration is as to whether the Commission has power to enlarge the scope of the Review Petition filed by the Appellant and giving the directions with regard to issues which were not the subject matter of the Review Petition?
13. The learned Counsel for the Appellant contended that the Commission has given directions on the issues which were not raised in the Review Petition. According to the Appellant, the law is well settled that the power of review is not inherent power. It must be conferred by law either specifically or by necessary implication. Only the High Courts and the Supreme Court, created under the Constitution of India have the plenary jurisdiction and can exercise inherent powers. Statutory Commissions can only exercise power when conferred by the Statute. The Commission has power to review its own decisions under Section 94(1)(e) of the Electricity Act 2003 as the same powers as vested in the Civil Courts under the CPC. Under the CPC any person considering himself aggrieved can apply for the review. Thus, the Commission can review its own decision only upon filing of review petition by any aggrieved person and the Commission does not have any powers to review suo-moto. Therefore, the Commission can adjudicate only on the issues which have been raised in the review petition.
14. While agreeing with the proposition that under CPC, the Commission could not have gone beyond the review petition filed by the Appellant, the learned Counsel for the Commission submitted that the Regulation

70 of the Commission's Conduct of Business Regulations vests with the Commission the powers to review on its own motion.

15. The learned Counsel for the Appellant submitted that the regulations framed by the Commission giving inherent powers/ powers to review on its own motion are ultra-vires of the Electricity Act 2003. He has relied on the judgment of Hon'ble Supreme Court in the case of *Nautam Prakash Vs K K Thakkar (2006) 5 SCC 330*.
16. It is well settled law that this Tribunal is not competent to examine the validity of the Regulations framed by the Appropriate Commission. However, we have powers to examine as to whether the regulations had been applied correctly or not. Let us quote the Regulation 70 of OERC Conduct of Business Regulations.

70 Review of the decisions, directions and orders:-

(1) The Commission may on its own motion, or on the application of any of the person or parties concerned, within 90 days of the making of any decision, direction or order, review such decision, directions or orders and pass such appropriate orders as the Commission thinks fit.

17. Perusal of the regulation quoted above would indicate that the Commission has power to review its decision either on its own motion or on application of any person. Therefore, the question would arise as to whether the review proceedings before the Commission were initiated on its own motion to review within ninety days or upon the application filed by the Appellant. Admittedly, the proceedings were initiated on the review petition filed by the Appellant and, therefore, the provisions of CPC and rules framed there under would apply.
18. Accordingly, the Commission have powers to adjudicate only on the issues which had been raised by the Appellant in the review petition.

The principles of the provisions of Order 47 Rule 1, CPC govern all the situations and we could not have anything to say or add beyond the law that speaks for itself.

19. The second question for consideration is as to **whether any of the directions given in the Impugned Review Order are not related to subject matter of the Review Petition?**

20. According to the Appellant the Commission has given following two directions in the Review Order acting beyond its jurisdiction.

(i) In case the dedicated lines/system is designed, erected and commissioned by OPTCL on behalf of the User, then OPTCL shall charge 16% departmental charge (including testing fee of the Electrical Inspector).

ii) The practice of asking for 'Infrastructure Loan' from any consumer's of DISCOM or from any generator for the dedicated feeder/dedicated transmission lines as a condition of connectivity agreement should stop from the date of the order.

21. In order to decide whether these directions are on the issues which had not been raised by the Appellant in the review petition, we have to look to the relevant portion of original order in Case No. 36 of 2005 dated 22.7.2006, the prayer made before the Commission in the review petition and the relevant portion of the Review Order dated 26.4.2011. We would first deal with the 1st direction related to supervision charges as quoted above. The relevant portion of Commission's order dated 22.7.2006 reads as under:

"When a consumer is asked to undertake the capital work, the estimated cost shall be calculated on the aforesaid basis. The licensee is entitled to get 6% of the total estimated capital

expenditure towards inspection fees for checking and ensuring that the capital works has been done as per the standards pertaining to safety and security. The licensee should ensure inspection of works by the Electrical Inspector.” {emphasis added}

22. It is clear from the above that the Commission’s approval for supervision charges at 6% relates only to the works which were to be taken up by the consumer itself. It did not refer to works which were to be taken up by the Appellant. Now let us refer to the prayer of the Appellant in the Review Petition being Case No. 63 of 2006 which is quoted as under:

...

- (i) *to exempt OPTCL from the duties/responsibility for power supply to EHT consumers which falls under the domain of Distribution licensees;*
- (ii) ***to allow supervision charge @ 16% over the total project outlay in lieu of 6% allowed; and***
- (iii) *to permit OPTCL to collect Rs.10 lakh/MW as infrastructure loan as is being collected to ensure commitment from and realistic assessment of power projection by the prospective EHT consumers till such time a mechanism is developed on cost sharing between DISTCOs/GRIDCO/OPTCL and approved by OERC.*

23. Thus, the Appellant has requested for review of supervision charges from 6% to 16%. Clearly the request was related to the works to be taken up by the consumers and not the works which were to be taken up by the Appellant. Now let us examine the directions given in the Review Order impugned herein.

“(i) In case dedicated EHT lines/system is constructed and charged by the ‘User’ itself, OPTCL is entitled for 6% supervision charge. Testing fee of Electrical Inspector is not included and this should be borne by the User as an additionality.

(ii) In case the dedicated lines/system is designed, erected and commissioned by OPTCL on behalf of the User, then OPTCL shall

charge 16% departmental charge (including testing fee of the Electrical Inspector). The total capital cost including departmental charge payable by the User shall be approved by the Commission."

24. Conjoint reading of the Commission's Order dated 22.7.2006, review petition and Commission's Review order dated 26.4.2011 would make it amply clear that the direction at (ii) was neither given in order dated 22.7.2006 nor prayed for in the review petition. The issue relating to supervision charges with respect of works taken up by the Appellant on behalf of consumer was not an issue before the Commission in case no. 35 of 2005. It was also not an issue raised by the Appellant in the Review Petition. Therefore, the Commission did not have power to give ruling on this issue in review order as discussed in para 18 above.
25. Now we will deal with the Second direction of the Commission viz., *"the practice of asking for 'Infrastructure Loan' from any consumer's of DISCOM or from any generator for the dedicated feeder/dedicated transmission lines as a condition of connectivity agreement should stop from the date of the order."*
26. The relevant portion of the Commission order dated 22.7.2006 is reproduced as under:

"29. The Commission finds no justification for collection of Rs.10 lakh per MW from the prospective consumer for construction of lines and s/s upto the load centre to be developed by OPTCL after due regulatory approval which has to be financed by OPTCL following prudent financial practices. However, the Commission shall have no objection if prospective consumers come forward voluntarily for giving loan to the transmission company at the prevailing bank rate."{Emphasis added}

27. From the above it is clear that the Commission had observed that there is no justification for collection of Rs 10 lakh per MW from the

prospective consumer for building the backup transmission network. Let us now quote the prayer of the Appellant.

“(iii)to permit OPTCL to collect Rs.10 lakh/MW as infrastructure loan as is being collected to ensure commitment from and realistic assessment of power projection by the prospective EHT consumers till such time a mechanism is developed on cost sharing between DISTCOs/GRIDCO/OPTCL and approved by OERC.”

28. Conjoint reading of the Commission's order and Appellants' prayer would indicate that the Appellant had understood that the Commission had stopped it from collection of Rs 10 Lakh/MW from prospective consumers and therefore prayed for Commission's permission. The Appellant in its prayer did not ask for deletion of the second sentence in the direction relating to prospective consumer coming forward voluntarily to pay the 'infrastructure loan'. This observation of the Commission was quite benign. Why any authority would have any objection if a consumer comes forward to give interest bearing loan to get its job expedited. The Commission, through this observation indicated that the interest so paid would be pass thru in the ARR. Now let us examine the direction in the Impugned Review order dated 26.4.2011 which is quoted below.

*“The upgradation of backbone transmission network, with proper 'cost benefit' analysis in any case is approved by the Commission and, **therefore, demanding for any infrastructure loan from any consumer's of DISCOM by the Transmission licensee should stop from the date of this order.** However, the infrastructure loan already taken or agreed to be taken on or before the date of this order will be governed/regulated as per the agreement already entered into and there is no question of any immediate refund of such infrastructure loan already taken/given. User, however, is entitled for its due relief as per the remunerative cost calculation.” {emphasis added}*

29. Bare perusal of above would indicate that the Commission has stopped the **demanding of any infrastructure loan from any consumer**. Thus, the Commission has reiterated its earlier direction given in its Order in Case No. 36 of 2005 dated 22.7.2005. This direction cannot be held as direction on the issue not raised in the review petition. The Appellant has raised the issue related to the 'infrastructure loan' and the Commission has further clarified its direction given in its Order dated 22.7.2006.
30. Our above findings are restricted to the question as to whether the directions given in the Impugned Review Order are not related to subject matter of the Review Petition and are not on the correctness of these directions.
31. The third question for consideration is as to **whether the line connecting the transmission network of the Appellant and the consumer's premises (last mile connection) is part of transmission network of the Transmission Licensee or part of the distribution network of Distribution Licensee?**
32. The learned Counsel for the Appellant made very elaborate submissions on this issue contending that the last mile connection is part of distribution network. The gist of his submissions are given below:
- a) Under the Scheme of the Electricity Act 2003, the obligation to supply is of the Distribution licensee. Section 42 of the Act casts upon the Distribution Licensee to develop, operate and maintain and efficient distribution system within its area of supply. Section 2(19) read with Rule 4 of Electricity Rules, 2005 would make it abundantly clear that any line connecting with consumer's premises is part of distribution network.

b) The Commission has accepted that all consumers including EHT consumers are the consumers of concerned distribution licensee. Any obligation to supply power to any prospective EHT consumers and related commercial dealing lies with distribution licensee. The distribution licensee on their part would take up Transmission Utility for construction of any new EHT lines or system as required. Similarly, for the existing EHT consumers, any maintenance or operational procedure for dedicated EHT line, the distribution licensee would interact with the Appellant as per provisions of the Grid Code.

c) In para 48 of the Impugned Review Order the Commission has held as under:

*“48. OPTCL is required to construct the transmission lines up to the load centre but in the absence of clear cut definition in the Electricity Act, 2003 or clear cut clarification by the Commission, OPTCL would construct the transmission lines up to the grid substations or to the distribution substations which should be treated as the load centre **and not to the premises of the EHT consumers.**”*

d) Having rightly held the above propositions, the Commission has erred in holding that the responsibility of construction of EHT lines should remain with the Appellant.

33. Per-contra the Learned Counsel for the 10th Respondent contended that any EHT line including last mile connection is part of transmission network as defined in Section 2(72) read with definition of substation as per Section 2(69) of the Act. He further submitted that in terms of Section 39 of the Act, it is the duty of the STU to ensure development of efficient intra-state transmission network from generating stations to load centres. The Consumer's premises is a load centre as per the judgment

of this Tribunal in Appeal No. 139 and 140 of 2007 in case of *Nalwa Steel and Power Limited Vs Chhatisgarh Electricity Regulatory Commission*.

34. The learned Counsel for the Appellant has relied upon the definition of distribution network defined in Section 2(19) read with Rule 4 of Electricity Rules 2005.

“Section 2 (19) *“distribution system” means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;*

Electricity Rules 2005

Rule 4. Distribution System - *The distribution system of a distribution licensee in terms of sub-section (19) of Section 2 of the Act shall also include electric line, sub-station and electrical plant that are primarily maintained for the purpose of distributing electricity in the area of supply of such distribution licensee notwithstanding that such line, sub-station or electrical plant are high pressure cables or overhead lines or associated with such high pressure cables or overhead lines; or used incidentally for the purposes of transmitting electricity for others”.*

35. According to these provisions the Distribution network is a system of wires between delivery point on the transmission lines or generating station and point of connection to the consumer’s installation. It also includes the electric line, sub-station and electric plant that are primarily maintained for the purpose of distributing electricity notwithstanding that such line... is high pressure cables or overhead lines. We have to examine as to whether an EHT line emanating from an EHT substation of the transmission licensee and connects a consumer’s installation fits in to this definition of distribution network or not. Evidently, the last mile connection is a line is between delivery point on the transmission line and point of connection on the consumer’s premises and is primarily

used for distribution of electricity to such consumer. Therefore, it qualifies to be part of distribution network.

36. The learned Counsel for the Respondent no.10 contended that any EHT line connecting generating station and substation directly or through other sub-stations is a transmission line. Every EHT consumer would necessarily have a substation within its premises. Therefore, an EHT line from a substation owned by transmission licensee to consumer's substation would qualify to be a transmission line within the meaning of transmission line defined by Section 2(72) read with definition of sub-station defined in Section 2(69) of the Act. These subsections are quoted below:

(69) “ sub-station” means a station for transforming or converting electricity for the transmission or distribution thereof and includes transformers, converters, switchgears, capacitors, synchronouos condensers, structures, cable and other appurtenant equipment and any buildings used for that purpose and the site therof;

(72) “transmission lines” means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gears and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works.

37. Bare reading Section 2(72) would indicate that the definition of transmission line a residual definition. All high pressure cables and overhead lines which are not essential part of distribution system of a licensee are transmissions lines. Therefore, we have to examine as to whether a line in question is a part of distribution network or not. If it is not a part of distribution network, only then it could be transmission line.

As we have observed in para 35 above that last mile connection is part of distribution network, therefore, it cannot be a transmission line.

38. Next requirement for a line to be a transmission line is that the line must be transmitting electricity. Can supply to consumer be treated as transmission of electricity? The answer is 'no'. Supply of electricity to a consumer is universal service obligation casted upon distribution licensee under section 43 of the Act and accordingly, supply to a consumer is distribution and cannot be termed as transmission of electricity.
39. Next requirement is that it must be connected with a generating station or a substation. According to the learned Counsel for the Respondent, every EHT consumer would necessarily have a substation. Substation has been defined in Section 2(69) as a station for transforming electricity for transmission or distribution thereof. Can an arrangement for stepping down electricity at consumer's installations be held as substation as defined in Section 2(69) of the Act? Does this arrangement meant for transmission or distribution of electricity? The answer would again be 'no'. No person can transmit or distribute electricity without a license under the Act. Therefore, the arrangement of stepping down electricity for consumer's own use cannot be held to be a substation as defined in the Act.
40. The learned Counsel for the Respondent no. 10 further contended that as per Section 39 of the Act, the Appellant, being a STU, is obliged to ensure development of efficient intra-state transmission system for smooth flow of electricity from generating stations to load centres. A consumer premises has been held to be a load centre by this Tribunal in Appeal No. 139 & 140 of 2007 in the case of *Nalwa Steel and Power*

Limited. The above contention is wholly misplaced and is liable to be rejected for the following reasons:

- a) The judgment in Nalwa Steel and Power case had been rendered in the context of Dedicated Transmission Line constructed by a Captive Generating Plant and has no application in the facts of the present case. The issue in that case was as to whether a dedicated transmission line emanating from a captive generating plant terminates at two points.
- b) The Act defines a consumer as a person who is supplied with electricity for his own use by a licensee and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee. It does not differentiate between persons on the basis of the quantum of electricity requirement. A person requiring hundreds of MW or a fraction of kW of electricity (BPL consumer) is a consumer under the Act. If premises of an EHT consumer can qualify to be a load centre under section 39 of the Act, the same would be true for a BPL consumer. Can we hold that the STU is obligated to ensure smooth flow of electricity up to premises of a BPL consumer? If so, what is the need of a distribution licensee? It is the duty of a distribution licensee to develop, operate and maintain distribution system to meet universal service obligation casted upon it under Section 43 of the Act.
- c) Section 38 of the Act casts the same duties on CTU as Section 39 casts on STU i.e. to ensure development of an efficient, co-ordinated and economical system of inter-State transmission lines **for smooth flow of electricity from generating stations to the**

load centres. No stretch of imagination would support the contention that Section 38 mandates the CTU i.e. POWERGRID is to ensure smooth flow of power to any consumer, let alone the BPL consumer.

41. In the light of above discussion we are of the view that a line between transmission system and a consumer's premises is a part of distribution system.
42. Natural offshoot of above finding would be lead to the question as to whose responsibility would be to erect, operate and maintain such EHT lines. Section 42 of the Act mandates the distribution licensee to develop, operate and maintain distribution network. Thus it would be the duty of the distribution licensee to erect, operate and maintain the EHT lines as part of its distribution network. However, if the distribution licensee decides that it does not have expertise to carry out these jobs, it can entrust the same to the transmission licensee on mutually agreed terms duly approved by the Commission. We would like to mention that many generating companies have entrusted these assignments in relation to dedicated transmission lines to concerned STU.
43. The fourth question for our consideration is as to whether the scheme for sharing of service line expenditure on remunerative principles for distribution can be applied to the Appellant mutatis mutandis?
44. In view of our findings to last question above that last mile connection belongs to Distribution Licensee and accordingly remunerative principles would apply to it through distribution licensee only.

45. The fifth question before us for consideration is as to whether the Commission has rightly fixed the supervision charges at 6% instead of 16% which had been collected by the Appellant?
46. The learned Counsel for the Appellant contended that the Commission has reduced supervision charges from 16% to 6% which is too meagre as compared to the quantum of work the Appellant is expected to carry out. He made the following submissions in support of his contentions:
- a) The Appellant being the transmission licensee and having expertise in the field of transmission, can undertake the construction and / or supervision of the construction of the EHT service lines of the consumer (whether being executed by the concerned the distribution licensee or by the consumer himself on behalf of the distribution licensee) on payment of Supervision Charges in accordance with the provisions of Section 41 of the Act (Other business of transmission licensee).
 - b) The Supervision Charges of 6% of the gross estimate as approved by the Commission apparently in consonance with the Supervision Charges allowed to the distribution licensees for identical purpose, is very meagre keeping in view the extent of work to be carried out by the Appellant.
 - c) The Supervision by the Appellant will in general cover the following aspects:
 - a. Supervision of survey works: Preliminary, detailed, check and contour survey, checking of profiles, tower schedules and route alignments, land schedules etc.
 - b. Checking of soil investigation data.

- c. Assistance in obtaining various statutory clearances and publication of statutory notifications.
 - d. Checking and approval of drawings, designs, technical specifications of all EHT equipments such as power transformers, switchgears etc., structures, line materials, control protection schemes, cable schedules & approval of vendors.
 - e. Pre-delivery inspection of all EHT equipments and materials at the manufacturers' works.
 - f. Supervision of construction works like foundation and erection of equipments etc.
 - g. Final checking and testing of the equipments.
 - h. Arrangement of line clearances.
 - i. Assistance in the inspection of Electrical Inspectorate.
 - j. Charging of the electrical installations.
- d) Most of these activities like elaborate survey and documentation required for EHT lines are not required in HT and LT lines. The volume of works like checking of drawings etc. and consequent man-hour and technical expertise involved are many times more than that of HT/LT lines. When critical equipments like transformers, AB switch, conductor, HG fuses, PSC poles, joists etc. are available in the state, almost all materials for EHT lines and bays are procured from outside the State. the Appellant incurs additional expenditure for deputing inspecting officers to outside state for inspection of materials.

- e) In view of the above, a committee was formed by the erstwhile GRIDCO to revise the norms of deposit works, and accordingly, the supervision charges of 16% in the event a beneficiary executes the work, has been adopted.
- f) the Appellant provides all its technical expertise developed over 50 years, technical specification, supervises the work to ensure quality and provide all support for statutory clearances for the Extra High Voltage (EHV) system, for which 16% supervision charges is fully justified.
- g) It may also be stated that OERC has already considered the Supervision Charges collected by the Appellant as the income of the Appellant in the Annual Revenue Requirement (ARR) and Transmission Tariff Orders and any interference would adversely affect the ARR of the Appellant.
- h) The Supervision Charges at 16% are at par with such charges being levied by other States as well as by PGCIL:-
- i) After payment of Supervision Charges and Transfer of the Line to the Appellant, the consumer is freed from payment of any charges for maintenance of the line for all times.
- j) In case of Chhattisgarh State Power Transmission Co. Ltd. vs. M/s. R.R. Energy (Appeal No. 166 of 2010) reported in 2011 ELR (APTEL) 898 this Tribunal has upheld the Supervision Charges @ 15%. Relevant Extract from the judgment is quoted below:-

“58. We find that the above observations of the State Commission are well reasoned. Levy of 15 per cent supervision charges are justified in cases where an asset is established by consumer and is handed over to licensee for operation and maintenance. The rationale for such view is that since the asset is

to be maintained by licensee for whole of its life. Licensee has to replace any part of the asset which got defective during life time at his costs; he is entitled to claim supervision charges. Thus, we do not find any reason to interfere with the findings of the State Commission."

47. The findings of Commission in the impugned Review order read as under:

*"52. We observe that the submission of OPTCL mixes up 'departmental charges' claimed by the Central PWD and State Govt. Deptt. for planning, designing and execution on behalf of the client organisation with that of 'erection & supervision charge'. We feel that where the dedicated EHT line is constructed voluntarily by the User itself, as per the Standards and specification of OPTCL, at its own cost and the responsibility of OPTCL lies only for approval of drawings and erection supervision, then a charge of 6% supervision charge should be sufficient. In this place, the Commission stress the point that the 6% supervision charges will be applicable for the entire estimate including supply portion and not only on the part of the erection cost. As per the existing order, the 6% supervision charge also includes the cost of inspection fee payable to the Electrical Inspector before charging the line. We order that the User, constructing the line should, at its own cost, pay the inspection fees and obtain the permission of the Electrical Inspector for charging of the line. The inspection fee shall not be part of the 6% supervision charge to be paid to M/s OPTCL. **The 6% supervision charge is meant for approval of design/construction drawing and to ensure that the material as erected and quality of erection are as per the prescribed standard...**" {emphasis added}*

48. From the above it is inferred that the Commission has approved supervision charges at 6% for approval of design/construction drawings and to ensure that the materials as erected and quality of erection are as per prescribed standards. Thus, in case the consumer opts to erect the line by himself, the responsibility of the Appellant is restricted to approval of drawings and erection supervision and 6% of entire estimated cost including the cost of material for approving the drawings and erection

supervision appear to be adequate. The Commission has rightly rejected the prayer of the Appellant to enhance the supervision charges to earlier level of 16%.

49. The contention of the Appellant that reduction in Supervision Charges would affect its ARR is misconceived. The charges actually collected by the Appellant as supervision charges would be accounted for in revenue receipt during the year and deducted from its ARR as miscellaneous receipts and other components of ARR would remain intact. For example if the Appellant receives Rs 160 crores as supervision charges, same would be considered as revenue receipt and deducted from ARR. If, instead of Rs 160 crores the Appellant received only Rs 60 crores, then only RS 60 crores would be deducted. In a regulatory regime the licensee gets only the Return on Equity as income and all other expenditure on actual basis subject to prudence check. There would not be any impact of change in supervision charges on licensee's income i.e. RoE.
50. Accordingly, the issue is decided against the Appellant.
51. The sixth question for our consideration is as to whether the Commission has rightly denied the Appellant to collect the "Infrastructure Loan" from prospective EHT consumers.
52. The learned Counsel for the Appellant submitted that the Appellant is short of funds for improvement / upgradation of the Transmission System. Even for availing loan from the financial institutions, corresponding equity is required. OPTCL being a Government Company has only limited equity and cannot, therefore, avail loans required for improvement / upgradation of the vast Transmission Network. Infrastructure Loan has its origin in the Minutes of Meeting dated

19.10.2004 between the Principal Secretary, Department of Energy, C.M.D. GRIDCO, C.M.D. of DISCOMs, C.M.D., IPICOL and representatives of various Industrial Units. The Infrastructure Loan is utilised to upgrade the upstream system. The industrial consumers have tendency to project very ambitious power requirement but with Infrastructure loan condition they cut down their requirement and may reasonable assessment of their power requirement. The learned Counsel for the Appellant further submitted that there is no bar in the Act for collection of infrastructure loan. The Appellant has power to collect such loan as per the provisions of Section 41 and 86(1)(c) of the Act. The Appellant collects this loan from prospective consumers at a nominal interest of 6% as against 9% to 10% which is the interest rate of commercial banks. The benefit of lower rate is passed on to consumers.

53. Per-contra, the learned Counsel for the Respondent No. 10 submitted that construction of EHT Transmission Line to the premises of the consumer is the duty of OPTCL and as such OPTCL cannot take any Infrastructure Loan from such consumers. No consumer would voluntarily agree to give loan and all consumers are forced to give loan is without any basis.
54. The findings of the Commission in the Impugned Review Order are as under:

"53. Regarding the continuance of Infrastructure loan of Rs.10 lakh/MW and the claim of suitable enhancement, OPTCL argues that even though the cost of dedicated EHT feeder is fully borne by the sole user, it has to bear additional cost on account of upgradation of back-up network in order to supply quality power to the prospective consumers. OPTCL further argues that as per their past experience, normally the EHT consumer make a requisition of higher drawl than their requirement causing unnecessary bottled-

up high network cost without any benefit. The infrastructure loan work as a check point for the prospective user to assess its requirement correctly. We do not find any justification for such a claim. We have already stated that any user (including dedicated EHT consumer) are the consumers of the DISCOM and they should give their requisition only to DISCOM. DISCOM on its part, after due prudency check shall interact with the Transmission licensee for need of dedicated EHT lines for sole consumer or upgradation of S/S to cater to other consumers including the prospective EHT consumer. The need for upgradation and maintenance of a strong 220 KV and 400 KV backbone network is a normal planning exercise of Transmission utility with constant interaction with the Distribution utility.

54. Regarding the second argument that the prospective user holds the transmission capacity without any immediate use, we are of the opinion that it is the duty of DISCOM to have prudency check and enter into the agreement of contract demand for fixed charge payment with its consumer while interacting with the Transmission licensee for any likely upgradation of back-up network. We are not convinced with the submission of OPTCL that EHT consumer unnecessarily holds larger capacity without any immediate use, while the same time pays the higher fixed charge to DISCOM without actually availing the capacity. The condition of infrastructure loan as a check point for proper assessment of capacity is not correct, rather we tend to agree with the User's argument that the payment of infrastructure loan is a compulsion and never a voluntary Fixed Deposit scheme for them. It may be understood that any upgradation and/or new construction of EHT system is being made on the basis of request of DISCOM, by the Transmission licensee, although the User of the dedicated feeder pays for the initial cost, being the sole beneficiary. The User, in any case, is entitled for usual relief under remunerative cost analysis in due course of time.

55. The upgradation of backbone transmission network, with proper 'cost benefit' analysis in any case is approved by the Commission and, therefore, demanding for any infrastructure loan from any consumer's of DISCOM by the Transmission licensee should stop from the date of this order. However, the infrastructure loan already taken or agreed to be taken on or before the date of this order will be governed/regulated as per the agreement already entered into and there is no question of any immediate refund of

such infrastructure loan already taken/given. User, however, is entitled for its due relief as per the remunerative cost calculation.”

55. We fully appreciate and concur with the findings of the Commission which are well reasoned. Admittedly, the Appellant is a State Transmission Utility and a deemed transmission licensee. The functioning of the Appellant is governed by Part V of the Act dealing with Transmission of Electricity. Section 39 deals with State Transmission Utility and its functions and Section 40 provides duties of Transmission Licensee. These Sections do not permit the Appellant to collect any charges from the Consumer. Section 41 deals with other business of transmission licensee, which enable the transmission licensee to carry out other business using the assets of transmission business. It does not permit the licensee to collect amount from consumers to create asset for transmission business. In fact, the Act does not permit the transmission licensee to collect any amount directly from a consumer except transmission charges under open access. The Appellant has prayed for permission to collect infrastructure loan from prospective EHT consumers for upgrading upstream transmission network required for free flow of power to such 'prospective consumer'. Augmentation of transmission network could be required to meet the ever increasing demand of existing LT consumers also. In such case the complete expenditure would have to be met by the Appellant from its own resources. Prospective EHT consumers can not be discriminated only because they might have made huge investments in setting up industry and are in urgent need of power and can be forced to shell out the 'infrastructure loan'.

56. In view of above discussions, we do not find any reason to interfere with the directions of the Commission. The issue is accordingly decided against the Appellant.
57. In the light of our above findings, the Appeal is partly allowed to the extent indicated in paragraphs 24 and 44 in the body of the judgement. However, there is no order as to costs.

(V J Talwar)
Technical Member

(Justice Partha Sakha Datta)
Judicial Member

Dated: 14th December, 2012

REPORTABLE/NOT REPORTABLE

