

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)	
In re:)	Chapter 11
)	
SOUTHCROSS ENERGY PARTNERS, L.P.,)	Case No. 19-10702 (MFW)
<i>et al.</i> ,)	
)	Jointly Administered
Debtors. ¹)	
)	RE: D.I. 550

CERTIFICATE OF COUNSEL REGARDING MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING THE (A) SALES OF CERTAIN EMISSION REDUCTION CREDITS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES AND (B) PAYMENT OF RELATED FEES AND COMMISSIONS AND (II) GRANTING RELATED RELIEF

The undersigned counsel to the above-captioned debtors and debtors in possession (the “**Debtors**”) hereby certifies as follows:

1. On October 18, 2019, the Debtors filed the *Motion of Debtors for Entry of an Order (I) Authorizing the (A) Sales of Certain Emission Reduction Credits Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Payment of Related Fees and Commissions and (II) Granting Related Relief* [D.I. 550] (the “**Motion**”).

2. Pursuant to the *Order Shortening Notice of Motion of Debtors for Entry of an Order (I) Authorizing the (A) Sales of Certain Emission Reduction Credits Free and Clear of Liens,*

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors’ mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.



Claims, Interests, and Encumbrances and (B) Payment of Related Fees and Commissions and (II) Granting Related Relief [D.I. 560], the deadline to file objections or responses to the relief requested in the Motion was October 25, 2019 at 4:00 p.m. (Eastern Daylight Time).

3. The Debtors received informal comments to the Motion from the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”). Besides the informal comments from the U.S. Trustee, the Debtors have received no other objection or informal comments, and no objection or other responsive pleading to the Motion appears on the Court’s docket.

4. The Debtors have resolved the informal comments of the U.S. Trustee through revisions to the proposed order granting the relief requested in the Motion (the “**Proposed Order**”). The Proposed Order is attached hereto as Exhibit A.

5. For the convenience of the Court and all parties in interest, a blackline comparing the Proposed Order marked against the version filed with the Motion is attached hereto as Exhibit B.

6. The U.S. Trustee has reviewed the Proposed Order and does not object to its entry.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order substantially in the form attached hereto as Exhibit A at its earliest convenience.

Dated: October 28, 2019
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Eric W. Moats

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Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
)	
SOUTHCROSS ENERGY PARTNERS, L.P.,)	Case No. 19-10702 (MFW)
<i>et al.</i> ,)	
Debtors. ¹)	Jointly Administered
)	
)	RE: D.I. 547
)	

**ORDER (I) AUTHORIZING THE (A) SALES OF CERTAIN EMISSION
REDUCTION CREDITS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS,
AND ENCUMBRANCES AND (B) PAYMENT OF RELATED FEES AND
COMMISSIONS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of Southcross Energy Partners, L.P. (“**Southcross**”), Southcross Energy Partners GP, LLC, and Southcross’s wholly owned direct and indirect subsidiaries, each of which is a debtor and debtor in possession in the Chapter 11 Cases (collectively, the “**Debtors**”), for entry of an order, pursuant to sections 363 and 105(a) of the Bankruptcy Code, Bankruptcy Rule 6004, and Local Rule 6004-1, authorizing the sale of the ERCs free and clear of liens, claims, interests, and

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² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

encumbrances; and the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and opportunity for a hearing on the Motion having been given to the parties listed therein; and the Court having reviewed and considered the Motion and the Howe Declaration; and the Court having the opportunity to hold a hearing on the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion being in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. The relief requested in the Motion is granted and approved in all respects as set forth in this Order.
2. Any 363 Sales with a purchase price at or above the Threshold Price shall be deemed approved in all respects as set forth in this Order.
3. Any objections to the Motion or the relief requested therein that have not been adjourned, withdrawn, or resolved are overruled in all respects on the merits.

4. The Debtors are hereby authorized to sell the ERCs at or above the Threshold Price.

5. Pursuant to section 363(b) of the Bankruptcy Code, each of the Debtors is hereby authorized to enter into, perform, consummate, and implement 363 Sales, together with all additional instruments and documents that may be reasonably necessary or desirable to sell the ERCs at or above the Threshold Price, and to take any and all further actions as may be necessary or appropriate to the performance of its obligations as contemplated by this Order, including paying any expenses or costs that are required to be paid in order to consummate the 363 Sales contemplated by this Order or to perform its obligations under any agreement related thereto.

6. Pursuant to sections 363(f) and 105(a) of the Bankruptcy Code, upon the closings of the 363 Sales, the ERCs shall be transferred, sold, and delivered to any and all buyers free and clear of all liens and claims. All other liens and claims that existed against the ERCs prior to the closings of such transactions, including, without limitation, the DIP Liens, the Permitted Senior Liens, Prepetition Liens, Adequate Protection Liens, and the liens held by the Local Texas Tax Authorities (each as defined in the DIP Order³), shall attach to the sale proceeds the Debtors receive under the 363 Sales (subject to the terms and conditions set forth in the DIP Order, this Order, or other applicable order of the Court, including without limitation, the Carve-Out (as defined in the DIP Order) and Wind-Down Budget). Those liens and claims will attach to the proceeds of

³ “**DIP Order**” means the *Final Order, Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, and 507, (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Post-Petition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief* [D.I. 200].

the 363 Sales in the same order of relative priority and with the same validity, force, and effect that the holder of such lien or claim had against the ERCs prior to the closings of the 363 Sales (including, for the avoidance of doubt, as set forth in the DIP Order), and will be subject to any claims and defenses the Debtors may possess with respect thereto. The interests of the holders of such liens or claims are being adequately protected pursuant to the provisions of this Order by having their liens or claims, if any, in each instance against the Debtors, their estates, or any of the ERCs, attach to the proceeds of the 363 Sales ultimately attributable to the ERCs in which such creditor or interest holder alleges an interest, in the same order of priority and with the same validity, force, and effect that such creditor or interest holder had prior to the 363 Sales, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

7. Pursuant to section 363 of the Bankruptcy Code, the Debtors have exercised sound business judgment in connection with the 363 Sales.

8. As a result of the 363 Sales contemplated, no purchaser of the ERCs shall be a successor to any of the Debtors by reason of any theory of law or equity, and no purchaser shall have any liability for any lien or claim against or in any of the Debtors as a result of any application of successor liability theories.

9. Without limiting the generality of the immediately preceding paragraph, purchasers of the ERCs shall not be assuming, nor shall they in any way whatsoever be liable or responsible, as successors or otherwise, for any of the following claims or liens: any claims or liens of the Debtors or any claims or liens in any way whatsoever relating to or arising from the ERCs or the Debtors' operations or use of the ERCs, including, without limitation, any liabilities calculable by reference to the Debtors or their ERCs or

operations or relating to continuing conditions existing at or prior to the closings of the 363 Sales, which claims or liens, as against such purchasers, shall be deemed extinguished, without regard to whether the claimant asserting any such claims or liens has delivered to such purchasers a release thereof.

10. No person or entity, including, without limitation, any federal, state, or local governmental agency, department, or instrumentality, shall assert by suit or otherwise against any buyer or its successors in interest any claim or lien that they had, have, or may have against the Debtors, or any claim or lien relating to or arising from the ERCs or the Debtors' operations or use of the ERCs.

11. The terms and provisions of any purchase agreement with respect to the 363 Sales and all related documents necessary to consummate the 363 Sales, together with the terms and provisions of this Order, shall be binding in all respects upon the Debtors, their estates, their creditors, and all parties in interest, including any and all successors and assigns (including, without limitation, any trustee appointed under the Bankruptcy Code).

12. All entities holding liens or claims against the ERCs shall be, and they hereby are, barred from asserting such liens or claims against the buyers and/or the ERCs and all entities holding such liens or claims shall be deemed to have released the ERCs to the buyers and to have limited the assertion of their liens or claims against the ERCs (subject, in all cases, to the priority set forth in the DIP Order, the Carve-Out, and the Wind-Down Budget) to the sale proceeds the Debtors receive for the sale of the ERCs and any other available property of the Debtors' respective estates that does not constitute the ERCs.

13. The 363 Sales are being negotiated by Debtors, the buyers, and their respective representatives at arm's length, without collusion, and in "good faith," as that term is defined in section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to finalize and consummate the 363 Sales shall not affect the validity of the 363 Sales or any term of any purchase agreements, and shall not permit the unwinding of the 363 Sales. The buyers shall be deemed good faith purchasers, within the meaning of section 363(m) of the Bankruptcy Code and, as such, are entitled to the full protections of section 363(m) of the Bankruptcy Code.

14. The Threshold Price is fair and reasonable. None of the Debtors nor the potential buyers have engaged in any conduct that would cause the 363 Sales to be avoided, or damages or costs to be imposed, under section 363(n) of the Bankruptcy Code.

15. At the closing of all ERC sales, the sale proceeds shall be applied in accordance with section 3.04(b)(ii) of the DIP Credit Agreement.

16. Nothing contained in any plan of reorganization (or liquidation) confirmed in the Chapter 11 Cases, any order confirming any plan of reorganization (or liquidation), or any other order of any type or kind entered in the Chapter 11 Cases or any related proceeding, including any subsequent chapter 7 case, shall conflict with or derogate from the terms of this Order.

17. Notwithstanding Bankruptcy Rules 6004, 6006, and 7062 and any other applicable Bankruptcy Rules or applicable Local Rules to the contrary, this Order shall be

effective immediately upon entry and shall not be subject to any stay in the implementation, enforcement, or realization of the relief granted herein.

18. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

19. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the 363 Sales.

20. The Debtors are hereby authorized to enter into purchase agreements for sales of ERCs, and such purchase agreements and any related agreements, documents, or instruments may be modified, amended, or supplemented by the parties thereto in accordance with the terms thereof, without further order of the Court, so long as any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

21. If there is any direct conflict between any purchase agreement and this Order, the terms of this Order shall control.

Dated: Wilmington, Delaware

_____, 2019

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Blackline

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
SOUTHCROSS ENERGY PARTNERS, L.P.,)	Case No. 19-10702 (MFW)
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Debtors. ¹)	Jointly Administered
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**ORDER (I) AUTHORIZING THE (A) SALES OF CERTAIN EMISSION
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Upon the motion (the “**Motion**”)² of Southcross Energy Partners, L.P. (“**Southcross**”), Southcross Energy Partners GP, LLC, and Southcross’s wholly owned direct and indirect subsidiaries, each of which is a debtor and debtor in possession in the Chapter 11 Cases (collectively, the “**Debtors**”), for entry of an order, pursuant to sections 363 and 105(a) of the Bankruptcy Code, Bankruptcy Rule 6004, and Local Rule 6004-1, authorizing the sale of the ERCs free and clear of liens, claims, interests, and

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² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

encumbrances; and the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and opportunity for a hearing on the Motion having been given to the parties listed therein; and the Court having reviewed and considered the Motion and the Howe Declaration; and the Court having the opportunity to hold a hearing on the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion being in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. The relief requested in the Motion is granted and approved in all respects as set forth in this Order.
2. Any 363 Sales with a purchase price at or above the Threshold Price shall be deemed approved in all respects as set forth in this Order.
3. Any objections to the Motion or the relief requested therein that have not been adjourned, withdrawn, or resolved are overruled in all respects on the merits.

4. The Debtors are hereby authorized to sell the ERCs at or above the Threshold Price.

5. Pursuant to section 363(b) of the Bankruptcy Code, each of the Debtors is hereby authorized to enter into, perform, consummate, and implement 363 Sales, together with all additional instruments and documents that may be reasonably necessary or desirable to sell the ERCs at or above the Threshold Price, and to take any and all further actions as may be necessary or appropriate to the performance of its obligations as contemplated by this Order, including paying any expenses or costs that are required to be paid in order to consummate the 363 Sales contemplated by this Order or to perform its obligations under any agreement related thereto.

6. Pursuant to sections 363(f) and 105(a) of the Bankruptcy Code, upon the closings of the 363 Sales, the ERCs shall be transferred, sold, and delivered to any and all buyers free and clear of all liens and claims. All other liens and claims that existed against the ERCs prior to the closings of such transactions, including, without limitation, the DIP Liens, the Permitted Senior Liens, Prepetition Liens, Adequate Protection Liens, and the liens held by the Local Texas Tax Authorities (each as defined in the DIP Order³), shall attach to the sale proceeds the Debtors receive under the 363 Sales (subject to the terms and conditions set forth in the DIP Order, this Order, or other applicable order of the Court, including without limitation, the Carve-Out (as defined in the DIP Order) and Wind-Down Budget). Those liens and claims will attach to the proceeds of the 363 Sales in the same order of relative priority and with the same validity, force, and effect that the

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holder of such lien or claim had against the ERCs prior to the closings of the 363 Sales (including, for the avoidance of doubt, as set forth in the DIP Order), and will be subject to any claims and defenses the Debtors may possess with respect thereto. The interests of the holders of such liens or claims are being adequately protected pursuant to the provisions of this Order by having their liens or claims, if any, in each instance against the Debtors, their estates, or any of the ERCs, attach to the proceeds of the 363 Sales ultimately attributable to the ERCs in which such creditor or interest holder alleges an interest, in the same order of priority and with the same validity, force, and effect that such creditor or interest holder had prior to the 363 Sales, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

7. Pursuant to section 363 of the Bankruptcy Code, the Debtors have exercised sound business judgment in connection with the 363 Sales.

~~8. The Debtors are hereby authorized to pay the Broker the brokerage fee and the Environmental Consultant the environmental consulting commission, which fee and commission are fair and reasonable.~~

8. ~~9.~~ As a result of the 363 Sales contemplated, no purchaser of the ERCs shall be a successor to any of the Debtors by reason of any theory of law or equity, and no purchaser shall have any liability for any lien or claim against or in any of the Debtors as a result of any application of successor liability theories.

9. ~~10.~~ Without limiting the generality of the immediately preceding paragraph, purchasers of the ERCs shall not be assuming, nor shall they in any way whatsoever be liable or responsible, as successors or otherwise, for any of the following claims or liens: any claims or liens of the Debtors or any claims or liens in any way

whatsoever relating to or arising from the ERCs or the Debtors' operations or use of the ERCs, including, without limitation, any liabilities calculable by reference to the Debtors or their ERCs or operations or relating to continuing conditions existing at or prior to the closings of the 363 Sales, which claims or liens, as against such purchasers, shall be deemed extinguished, without regard to whether the claimant asserting any such claims or liens has delivered to such purchasers a release thereof.

10. ~~11.~~ No person or entity, including, without limitation, any federal, state, or local governmental agency, department, or instrumentality, shall assert by suit or otherwise against any buyer or its successors in interest any claim or lien that they had, have, or may have against the Debtors, or any claim or lien relating to or arising from the ERCs or the Debtors' operations or use of the ERCs.

11. ~~12.~~ The terms and provisions of any purchase agreement with respect to the 363 Sales and all related documents necessary to consummate the 363 Sales, together with the terms and provisions of this Order, shall be binding in all respects upon the Debtors, their estates, their creditors, and all parties in interest, including any and all successors and assigns (including, without limitation, any trustee appointed under the Bankruptcy Code).

12. ~~13.~~ All entities holding liens or claims against the ERCs shall be, and they hereby are, barred from asserting such liens or claims against the buyers and/or the ERCs and all entities holding such liens or claims shall be deemed to have released the ERCs to the buyers and to have limited the assertion of their liens or claims against the ERCs (subject, in all cases, to the priority set forth in the DIP Order, the Carve-Out, and the Wind-Down Budget) to the sale proceeds the Debtors receive for the sale of the ERCs

and any other available property of the Debtors' respective estates that does not constitute the ERCs.

13. ~~14.~~ The 363 Sales are being negotiated by Debtors, the buyers, and their respective representatives at arm's length, without collusion, and in "good faith," as that term is defined in section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to finalize and consummate the 363 Sales shall not affect the validity of the 363 Sales or any term of any purchase agreements, and shall not permit the unwinding of the 363 Sales. The buyers shall be deemed good faith purchasers, within the meaning of section 363(m) of the Bankruptcy Code and, as such, are entitled to the full protections of section 363(m) of the Bankruptcy Code.

14. ~~15.~~ The Threshold Price is fair and reasonable. None of the Debtors nor the potential buyers have engaged in any conduct that would cause the 363 Sales to be avoided, or damages or costs to be imposed, under section 363(n) of the Bankruptcy Code.

15. ~~16.~~ At the closing of all ERC sales, the sale proceeds shall be applied in accordance with section 3.04(b)(ii) of the DIP Credit Agreement.

16. ~~17.~~ Nothing contained in any plan of reorganization (or liquidation) confirmed in the Chapter 11 Cases, any order confirming any plan of reorganization (or liquidation), or any other order of any type or kind entered in the Chapter 11 Cases or any related proceeding, including any subsequent chapter 7 case, shall conflict with or derogate from the terms of this Order.

17. ~~18.~~ Notwithstanding Bankruptcy Rules 6004, 6006, and 7062 and any other applicable Bankruptcy Rules or applicable Local Rules to the contrary, this Order shall be effective immediately upon entry and shall not be subject to any stay in the implementation, enforcement, or realization of the relief granted herein.

18. ~~19.~~ The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

19. ~~20.~~ No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the 363 Sales.

20. ~~21.~~ The Debtors are hereby authorized to enter into purchase agreements for sales of ERCs, and such purchase agreements and any related agreements, documents, or instruments may be modified, amended, or supplemented by the parties thereto in accordance with the terms thereof, without further order of the Court, so long as any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

21. ~~22.~~ If there is any direct conflict between any purchase agreement and this Order, the terms of this Order shall control.

Dated: Wilmington, Delaware

_____, 2019

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Document comparison by Workshare 9.5 on Monday, October 28, 2019 12:01:42 PM

Input:	
Document 1 ID	interwovenSite://WIL-DMS/WILM/13214376/1
Description	#13214376v1<WILM> - SXE - ERC Sale Order (as-filed)
Document 2 ID	interwovenSite://WIL-DMS/WILM/13214458/1
Description	#13214458v1<WILM> - SXE - ERC Sale Order (revised)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	15
Deletions	16
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	31