

Presentment Date and time: May 27, 2015, at 12:00 p.m. (prevailing Eastern Time)

Objection Deadline: May 26, 2015, at 12:00 p.m. (prevailing Eastern Time)

Hearing Date and Time (Only if Objection Filed): May 27, 2015, at 12:00 p.m. (prevailing Eastern Time)

Dennis F. Dunne
Evan R. Fleck
MILBANK, TWEED, HADLEY & M^cCLOY LLP
1 Chase Manhattan Plaza
New York, NY 10005
Telephone: (212) 530-5000

Counsel for Reorganized Falcon

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:	
In re:	:	Chapter 11
	:	
FALCON GAS STORAGE COMPANY, INC.,	:	Case No. 12-11790 (SHL)
	:	
Reorganized Debtor.	:	Confirmed
	:	
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**NOTICE OF PRESENTMENT OF MOTION FOR ENTRY OF ORDER AND
FINAL DECREE CLOSING THE CASE**

PLEASE TAKE NOTICE that, on **May 27, 2015, at 12:00 p.m. (prevailing Eastern Time)**, Reorganized Falcon Gas Storage Company, Inc. ("Falcon") will present for signature to the Honorable Judge Sean H. Lane, Bankruptcy Judge of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004 (the "Court"), the attached *Motion for Entry of an Order and Final Decree Closing the Case* (the "Motion").

PLEASE TAKE FURTHER NOTICE that responses or objections, if any, to the relief requested in the Motion shall conform to (a) the Federal Rules of Bankruptcy Procedure, (b) the Local Bankruptcy Rules for the Southern District of New York, and (c) the Case Management

Procedures approved by the Court in the above-captioned cases,¹ shall set forth the name of the objecting party, the basis for the objection and the specific grounds thereof, and shall be filed with the Court (a) electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov/court-info/local-rules-and-orders/general-orders) by registered users of the Court's electronic case filing system and, (b) by all other parties in interest, on a 3.5-inch disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with two hard copy delivered directly to Chambers), in accordance with the customary practices of the Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 and upon: (i) the Chambers of the Honorable Sean H. Lane, One Bowling Green, New York, New York 10004; (ii) counsel to the RA Group, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Evan R. Fleck, Esq.); (iii) the Office of the United States Trustee for the Southern District of New York at 201 Varick Street, Suite 1006, New York, New York 10014 (Attn.: Richard Morrissey, Esq.); and (iv) all the parties who requested notice under Bankruptcy Rules 2002 and 9010(b), so as to be filed and received no later than **May 26, 2015, at 12:00 p.m. (prevailing Eastern Time)** (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE that if no objections to the Motion are timely filed, served, and received by the Objection Deadline, the Court may enter an order granting the relief requested in the Motion without further notice or hearing. The parties are required to attend the hearing and failure to attend in person or by counsel may result in relief being granted or denied upon default.

¹ See Order (A) Waiving the Requirement that Each Debtor File a List of Creditors and Equity Security Holders and Authorizing Maintenance of Consolidated List of Creditors in Lieu of a Matrix; (B) Authorizing Filing of a Consolidated List of Top 50 Unsecured Creditors; and (C) Approving Case Management Procedures [Docket No. 21].

PLEASE TAKE FURTHER NOTICE that if a written objection is timely served and filed, a hearing to consider the Motion (the "Hearing") will be held before the Honorable Sean H. Lane, U.S. Bankruptcy Judge, in Room 701 of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004 on **May 27, 2015, at 12:00 p.m. (prevailing Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that objecting parties are required to attend the Hearing, and failure to appear may result in relief being granted or denied upon default.

Dated: New York, New York
May 1, 2015

MILBANK, TWEED, HADLEY & M^cCLOY LLP

By: /s/ Evan R. Fleck

Dennis F. Dunne

Evan R. Fleck

1 Chase Manhattan Plaza

New York, NY 10005

Telephone: (212) 530-5000

Counsel for Reorganized Falcon

Dennis F. Dunne
Evan R. Fleck
MILBANK, TWEED, HADLEY & M^cCLOY LLP
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	Chapter 11
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FALCON GAS STORAGE COMPANY, INC.,	:	Case No. 12-11790 (SHL)
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Reorganized Debtor.	:	Confirmed
	:	
-----X	:	

**MOTION FOR ENTRY OF ORDER AND
FINAL DECREE CLOSING THE CASE**

Reorganized Falcon Gas Storage Company, Inc. ("Reorganized Falcon") hereby files this motion (the "Motion") for the entry of a final decree, substantially in the form attached hereto as **Exhibit A** (the "Final Decree"), closing Case No. 12-11790 (the "Case"). In support of this Motion, Reorganized Falcon respectfully states as follows:

Preliminary Statement

1. On January 31, 2014, the Court entered an order [Docket No. 1759] confirming the *Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code (With First Technical Modifications)* as to Reorganized Falcon's predecessor in interest ("Falcon"). On February 19, 2014, Falcon successfully consummated the plan and emerged from bankruptcy protection. Since that time,

the Case has been fully administered. Therefore, Reorganized Falcon submits that, subject to the Court's approval of the *Closing Report for the Case* (the "Closing Report"), which is attached hereto as **Exhibit B**, the Court's role in the administration of the Case is effectively completed.

2. Therefore, by this Motion, Reorganized Falcon seeks to close the Case – even though the chapter 11 cases of some of Falcon's affiliates remain open – so as to avoid the continued incurrence of unnecessary fees and expenses of administration, such as quarterly fees of the United States Trustee.

Jurisdiction

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The statutory bases for the relief requested herein are sections 105 and 350(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Rule 3022 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3022-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules").

Relief Requested

6. By this Motion, Reorganized Falcon respectfully requests that the Court enter the Final Decree, substantially in the form attached hereto as **Exhibit A**, closing the Case.

Basis for Relief

A. Statutory Framework

7. Section 350(a) of the Bankruptcy Code provides that "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case." 11 U. S.C. § 350(a). Bankruptcy Rule 3022, which implements section 350 of the Bankruptcy Code, further

provides that “[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.” Fed. R. Bankr. P. 3022.

8. The term “fully administered” is not defined by either the Bankruptcy Code or the Bankruptcy Rules. The 1991 Advisory Committee Notes to Bankruptcy Rule 3022 (the “Advisory Notes”) set forth certain factors that should be considered when evaluating whether a case has been fully administered. These factors are:

- (i) whether the order confirming the plan has become final;
- (ii) whether deposits required by the plan have been transferred;
- (iii) whether the property proposed by the plan to be transferred has been transferred;
- (iv) whether the debtor or the successor of the debtor under the plan has assumed the business or management of the property dealt with by the plan;
- (v) whether payments under the plan have commenced; and
- (vi) whether all motions, contested matters, and adversary proceedings have been finally resolved.¹

9. The court in Walnut Assocs. v. Saidel, 164 B.R. 487, 492–93 (E.D. Pa. 1994), has noted that the Advisory Notes correspond to the elements necessary for substantial consummation of a plan of reorganization under the Bankruptcy Code and, accordingly, to determine whether a bankruptcy case has been fully administered for the purposes of entering a final decree, a court may apply the requirements established by section 1101(2) of the Bankruptcy Code. Section 1101(2) defines substantial consummation as follows:

- (i) transfer of all or substantially all of the property proposed by the plan to be transferred;

¹ See, e.g., In re McClelland, 377 B.R. 446, 453 (Bankr. S.D.N.Y. 2007) (the Advisory Notes “list a number of factors for the Court to consider before entering a final decree”); In re Kliegel Bros. Universal Elec. Stage Lighting Co., Inc., 238 B.R. 531, 542 (Bankr. E.D.N.Y. 1999) (same).

- (ii) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and
- (iii) commencement of distributions under the plan.

11 U.S.C. § 1101(2).

B. The Case Has Been Fully Administered

10. The Case has been fully administered. Falcon's chapter 11 plan has been confirmed and consummated. Not only have distributions under the plan commenced (as the case law indicates may be sufficient for a case to be closed), but such distributions have been completed.

11. In total, seventy-eight (78) proofs of claim were filed against Falcon, asserting a total of \$419,249,215.59 (plus further unliquidated amounts). Out of these, forty-four (44) claims were disallowed, one (1) claim was allowed in a reduced amount, and thirty (30) claims were withdrawn. Three (3) general unsecured claims were allowed in the aggregate amount of \$492,670.82.

12. Furthermore, two litigation claims have been settled (see Order, Pursuant to Bankruptcy Rule 9019, Approving Settlement Agreement with Thronson Parties [Docket No. 1891]; Order Authorizing and Approving Tide/Hopper Settlement [Docket No. 1746]), resulting in the allowance of an additional \$190,000 claim.

13. The total of \$682,670.82 in cash has been distributed to the holders of allowed claims against Falcon in full and final satisfaction thereof.

14. All motions, contested matters, and adversary proceedings with respect to Falcon have been finally resolved.

15. To date, all quarterly fees owed to the Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”) for periods through Reorganized Falcon’s most recent operating quarter ending March 31, 2015 have been paid, and Reorganized Falcon does not owe any money to the Clerk of the Court as of the date hereof.

16. Accordingly, Reorganized Falcon requests the Court enter a Final Decree pursuant to section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022 closing the Case.

Final Report

17. As previously noted, and in accordance with the requirements of Local Rule 3022-1, the Closing Report attached hereto as **Exhibit B**, describes, among other things: (i) the fees and expenses of the retained professionals who rendered services during the pendency of the Case; and (ii) the distributions that have been made under the Falcon plan.

Notice

18. Reorganized Falcon has caused notice of this Motion to be provided by electronic mail, facsimile, and/or by overnight mail to (i) the Chambers of the Honorable Sean H. Lane, One Bowling Green, New York, New York 10004; (ii) counsel to the RA Group, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Evan R. Fleck, Esq.); (iii) the Office of the United States Trustee for the Southern District of New York at 201 Varick Street, Suite 1006, New York, New York 10014 (Attn.: Richard Morrissey, Esq.); and (iv) all the parties who requested notice under Bankruptcy Rules 2002 and 9010(b). Reorganized Falcon submits that, in light of the nature of the relief requested, no other or further notice need be given.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

WHEREFORE, Reorganized Falcon respectfully requests that the Court (i) enter the Final Decree, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein, and (ii) grant such other and further relief as is just and proper.

Dated: New York, New York
May 1, 2015

MILBANK, TWEED, HADLEY & M^cCLOY LLP

By: /s/ Evan R. Fleck
Dennis F. Dunne
Evan R. Fleck
1 Chase Manhattan Plaza
New York, NY 10005
Telephone: (212) 530-5000

Counsel for Reorganized Falcon

Exhibit A

Proposed Final Decree

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: : Chapter 11
FALCON GAS STORAGE COMPANY, INC., : Case No. 12-11790 (SHL)
Reorganized Debtor. : Confirmed
-----X

**FINAL DECREE CLOSING CHAPTER 11 CASE PURSUANT TO
SECTION 350(A) OF THE BANKRUPTCY CODE AND RULE 3022 OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

This Court having considered the motion (the “Motion”)¹ of Reorganized Falcon Gas Storage Company, Inc. (“Reorganized Falcon”) for a final decree closing the above-captioned chapter 11 case and the Closing Report attached to the Motion as Exhibit B (the “Closing Report”); and the Court having subject matter jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the Amended Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated January 31, 2012 (Preska, C.J.); and the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and no other or further notice needing to be provided; and the Court being satisfied that Falcon’s estate has been fully administered; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby:

¹ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

1. **ORDERED** that the relief requested in the Motion is granted.
2. **ORDERED** that, pursuant to section 350(a) of the Bankruptcy Code and Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Case is hereby closed.
3. **ORDERED** that the closing of the Case has no effect whatsoever on the pending chapter 11 cases of Reorganized Falcon's affiliates (the "Non-Falcon Reorganized Debtors"), which were administered jointly with the Case.
4. **ORDERED** that the Closing Report is approved.
5. **ORDERED** that no minimum quarterly fees shall be payable in respect of Falcon for periods after the date hereof.
6. **ORDERED** that any funds held by Reorganized Falcon following completion of distributions to Falcon's creditors shall be transferred to the Non-Falcon Reorganized Debtors.
7. **ORDERED** that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Final Decree.
8. **ORDERED** that Reorganized Falcon is authorized to take all actions necessary to effectuate this Final Decree.
9. **ORDERED** that the terms and conditions of this Final Decree shall be immediately effective and enforceable upon its entry.

Dated: New York, New York
_____, 2015

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Closing Report

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: : Chapter 11
: :
FALCON GAS STORAGE COMPANY, INC., : Case No. 12-11790 (SHL)
: :
Reorganized Debtor. : Confirmed
: :
-----X

CLOSING REPORT FOR THE CASE

To the best of my knowledge and belief, the following is a breakdown in the above-captioned case:

\$5,335,834.31	BANKRUPTCY PROFESSIONALS' FEES AND EXPENSES
\$780,707.48	OTHER PROFESSIONALS' FEES AND EXPENSES
\$682,670.82	DISTRIBUTIONS MADE TO HOLDERS OF ALLOWED CLAIMS
100%	DIVIDEND PAID

Dated: New York, New York
May 1, 2015

MILBANK, TWEED, HADLEY & M^cCLOY LLP

By: /s/ Evan R. Fleck
Dennis F. Dunne
Evan R. Fleck
1 Chase Manhattan Plaza
New York, NY 10005
Telephone: (212) 530-5000

Counsel for Reorganized Falcon