

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
Lafayette Division**

IN RE:

CASE NO. 16-50740

PROGRESSIVE ACUTE CARE, LLC, et al.

CHAPTER 11

DEBTORS

JOINTLY ADMINSTERED

**STIPULATION AND ORDER BY AND BETWEEN ENTERGY LOUISIANA, LLC AND
DEBTOR IN POSSESSION CONCERNING ADEQUATE ASSURANCE OF PAYMENT
FOR POST-PETITION ELECTRIC SERVICES PURSUANT TO 11 U.S.C. § 366**

STIPULATION by Entergy Louisiana, LLC (“Entergy”) and Progressive Acute Care, LLC (“Debtor”) in the above Chapter 11 case, executed effective as of June 24, 2016.

FACTUAL BACKGROUND

WHEREAS, on May 31, 2016 (the “Petition Date”), the Debtor filed a voluntary petition pursuant to Chapter 11 of the U.S. Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “Code”).

WHEREAS, no Trustee nor examiner has been appointed and Debtor possesses and operates its estate as Debtor in Possession.

WHEREAS, Entergy supplies electric utility services to Debtor.

WHEREAS, Entergy is a “utility” within the meaning of and is entitled to adequate assurance of payment pursuant to Section 366 of the Code.

WHEREAS, Entergy’s provision of utility services to Debtor and Debtor’s consumption of such utility services were pursuant to the terms set forth in Entergy’s invoices and the applicable tariffs, rules, regulations and laws governing Entergy’s provision of public utility services (collectively, the “Regulations”).

WHEREAS, Entergy continues to provide utility services to Debtor that are essential to Debtor’s continued business operations.

WHEREAS, but for this Stipulation, Entergy would have asserted, *inter alia*, that Section 366 requires that Entergy in this case be provided with a cash deposit as adequate assurance of payment in the amount of \$49,100.00 for Debtor's various accounts. Entergy will instead accept deposits totaling \$24,500.00 covering Debtor's various accounts.

WHEREAS, Entergy and Debtor have reached an agreement on adequate assurance of payment under Section 366.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Incorporation. The foregoing recitals are incorporated by reference.
2. Adequate Assurance of Payment. As assurance of payment for utility services provided after the Petition Date and during the above case, Debtor (a) shall pay Entergy \$24,500.00. Debtor shall pay such \$24,500.00 to Entergy within ten (10) days of Debtor's execution of this Stipulation and Order, regardless of whether by then the Court has entered this Stipulation and Order. Such payment shall be delivered to Entergy Services, Inc., L-JEF-359, 4809 Jefferson Highway, Jefferson, LA 70121, Attention: Jon A. Majewski.
3. Payment for Future Utility Services. Debtor shall timely pay all invoices from Entergy for post-petition services on the date due, in full, and otherwise in accordance with the Regulations ("Invoice Payments"). Invoice Payments shall be timely remitted to the appropriate payment address or location as provided pursuant to the invoices or the Regulations. Unless the parties otherwise agree in writing, all invoices to Debtor for post-petition utility services shall be transmitted to the addresses used for invoices prior to the Petition Date.
4. Termination Upon Non-Payment. Upon Debtor's failure to timely pay when and as due (a) any portion of any Invoice Payment or (b) any amount payable pursuant to

Paragraph 2 of this Stipulation (in each case, a “Default”), Entergy shall have the right to terminate all services to Debtor as follows: approximately 10 days after the due date for a payment, Entergy’s accounts receivable system should automatically generate a disconnect notice. Upon receipt of the disconnect notice, it shall be incumbent on Debtor to contact Entergy through its designee, Jon Majewski, at the following address

Jon A. Majewski, L-JEF-359
4809 Jefferson Highway
New Orleans, LA 70121
Phone: (504) 840-2585
Facsimile: (504) 840-2685
Email: jmajews@entergy.com

Mr. Majewski or Entergy’s other designee will extend Entergy’s standard disconnect period so that Debtor will have 20 days notice. Debtor shall have the right to cure any such Default by making an immediate payment to Entergy in good and immediately available funds, or as otherwise agreed to by Entergy, prior to the expiration of the aforementioned termination notice period of the amounts then due and owing under this Stipulation (the “Cure Payment”). In the event that Debtor makes such a timely Cure Payment, Entergy shall not have the right to terminate or suspend the provision of services on account of the cured Default.

5. Additionally, after July 1, 2016, upon Debtor’s failure to pay any portion of any Invoice Payment within fifteen (15) days after the date such Invoice Payment is due, Entergy shall be entitled to demand and to receive a cash deposit in the amount of \$49,100.00 (The “Deposit”), less a credit for the \$24,500.00 paid deposit referenced in Paragraph 2, which upon receipt by Entergy shall become additional assurance of payment for utility services provided by Entergy. Debtor shall be entitled to the return of the entire Deposit, and any entitled interest, after all final invoices have been paid in full; provided, however, that Debtor shall not be

entitled to any portion of the Deposit, nor any interest, that Entergy applies to satisfy the amount of any unpaid, past-due invoices, and Entergy shall be permitted to apply the Deposit, plus any entitled interest, to said unpaid invoices and shall refund the excess, if any, to Debtor.

6. Termination Upon Conversion. Upon the entry of an order converting Debtor's Chapter 11 case to a case under Chapter 7, Entergy shall have the right to terminate all services to Debtor, provided, however, and without limiting any other termination rights of Entergy under this Stipulation, Entergy shall not exercise such right without first giving fifteen (15) days written notice of termination to the Debtor.

7. Non-Payment Entitled to Administrative Expense. Upon Debtor's failure to pay any portion of an Invoice Payment or any amount due pursuant to Paragraph 2 of this Stipulation, Entergy shall have the right to an administrative priority expense claim pursuant to 11 U.S.C. § 503(b) with regard to such portion or amount.

8. No Injunctive Relief. Neither Debtor nor its counsel on its behalf shall seek the entry of an order restraining or enjoining Entergy's exercise of its rights under this Stipulation and Order, including but not limited to the termination rights described in the preceding paragraphs.

9. Billing or Other Disputes. Notwithstanding that Debtor may dispute Entergy's determination of the amount of any payment due under this Stipulation, Debtor's obligation to pay such amount in full, when and as due, is and shall be absolute. After payment, should Entergy and Debtor not resolve such dispute within thirty (30) days after Debtor has given written notice to Entergy of such dispute, Debtor may file a motion in this Court for a determination of the proper amount of such payment. Any payment made to Entergy is without prejudice to Debtor's right to recover any amount paid which is in excess of the amount due and

owing to Entergy.

10. Notices. All notices, requests, demands, and other communications under this Stipulation shall be in writing and shall be deemed to have been duly given on the date of service if served personally, by email, or by facsimile transmission; or on the third day after mailing if mailed by first class mail, postage prepaid, and addressed to such party as follows:

If to Debtor:

Progressive Acute care, LLC
2210 7th Street
Mandeville, LA 70471

with copy to:

William E. Steffes
Noel Steffes Melancon
13702 Coursey Blvd., Building 3
Baton Rouge, LA 70817
Phone: (225) 751-1998
Email: bsteffes@steffeslaw.com
Email: nmelancon@steffeslaw.com

If to Entergy:

Entergy Services, Inc.
Attention: Jon A. Majewski, L-JEF-359
4809 Jefferson Highway
New Orleans, LA 70121
Phone: (504) 840-2585
Facsimile: (504) 840-2685
Email: jmajews@entergy.com

with copy to:

Entergy Services Inc.
Attention: Sean D. Moore, L-ENT-26C
639 Loyola Avenue
New Orleans, LA 70113
Phone: (504) 576-7048
Facsimile: (504) 576-4150
Email: smoore6@entergy.com

Any party may change its address by giving written notice to the other parties in the manner set forth.

11. Calculation of Notice Periods. Any notice provided pursuant to this Stipulation shall not expire on a Saturday, Sunday, or “legal holiday” within the meaning of Fed.R.Bankr.P.9006(a). Any such notice period that would otherwise expire on a Saturday, or “legal holiday” shall be deemed to expire at 5:00 P.M. prevailing Central Time on the next day that is not a Saturday, Sunday, or “legal holiday”.

12. Execution in Counterparts. This Stipulation may be executed in any number of counterparts and by the different parties to this Stipulation on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same Stipulation.

13. Jointly Drafted. The preparation of this Stipulation has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

14. No Third Party Beneficiaries. The rights and benefits of this Stipulation shall not inure to the benefit of any third party.

15. No Assignment. This Stipulation is not assignable.

16. Entire Agreement. This Stipulation constitutes the entire agreement between the parties concerning adequate assurance of payment for utility services provided during these bankruptcy cases and supersedes any and all prior agreements or understandings between them on such matters and may only be amended by a writing signed by the party against whom enforcement is sought.

17. Court Approval. Except as otherwise provided herein, this Stipulation is subject to and shall become binding upon the approval by the Court.

18. No Effect upon Rights Under §365, Etc. Nothing in this Stipulation and Order is intended to, or does, affect (I) Debtor's right to reject, assume and/or assign any agreement pursuant to, and in accordance with, 11 U.S.C. §365, (ii) Entergy's rights under 11 U.S.C. §365, if any, and the Regulations, or (iii) any other rights or defenses of the parties under the Bankruptcy Code or the Regulations which are not inconsistent with the terms of this Stipulation.

19. Successors. This Stipulation shall be binding upon Entergy and Debtor and each of their successors, including but not limited to any Chapter 11 Trustee in Debtor's bankruptcy case.

AGREED AS TO FORM AND CONTENT:

/s/ William E. Steffes
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