Exhibit B

Department of Law
Monroe County, New York

Adam J. Bello
County Executive

John P. Bringewatt
County Attorney

February 2, 2023

VIA USPS
Thomas Broderick
Siemens Industry, Inc.
50 Methodist Hill Drive, Suite 1500
Rochester, NY 14623

Dear Mr. Broderick:

This letter is a formal notice and demand for damages, costs, expenses, and losses sustained by Monroe County (the "County") arising out of and resulting from the performance of the services, acts, omissions, negligence, and breaches by Siemens Industry, Inc. ("Siemens") under that certain Operation and Maintenance Agreement between Siemens and the County dated December 13, 2019 (the "Operating Agreement").

The County has appreciated Siemens partnership over the years, in particular Siemens' coordination in connection with the failure of the 38 KV to 5 KV stepdown transformer located at or near 430 East Henrietta Road, Rochester, New York 14620 (the "Transformer"). However, as noted in my letter dated May 18, 2021 to Michael Dillon, Senior Legal Counsel for Siemens, and for the reasons set forth below, the County is obligated to demand the approximately $1,240,593.12 the County incurred in damages, costs, expenses, and losses due to this failure.

Relevant Contract Terms

Siemens had the following responsibilities and obligations for the Transformer under the Operating Agreement. Unless otherwise stated herein, all capitalized terms shall have the same meaning as defined in the Operating Agreement:

- Operating the Facilities, which include the Transformer, in proper and workmanlike manner, in accordance with the practices, methods, and actions customarily engaged in or used by diligent and efficient operators of facilities of a nature similar to the Facilities. § 2.1.
- Operate, maintain, service, and repair the Facilities, which included the Transformer. § 5.1.
- Keep the Facilities, which included the Transformer, in good and safe condition, repair, working order and condition, including ordinary wear and tear. § 5.1.
- Promptly make all necessary repairs, rebuilds, overhauls, replacements and renewals to the Facilities, which included the Transformer, and whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen. § 5.1.

- Maintain the Facilities, which included the Transformer, in working order. § 5.1.
- Protect the Facilities, which included the Transformer, against deterioration, including ordinary wear and tear. § 5.1.
- Cause the Facilities, which included the Transformer, to continue to have the capacity and functional ability to perform, on a continuing basis, in normal commercial operation, at design capacity, the functions for which it was specifically designed. § 5.1.
- Comply with such standards and periodic maintenance inspections as shall be required to enforce warranty and similar claims against contractors for the Facilities, which included the Transformer, and any standards imposed by any insurance policies in effect at any time. § 5.1.
- Provide all necessary labor, materials, and equipment for the proper operation and maintenance of the Facilities, which included the Transformer. § 5.1.
- In the event of a system failure, investigate and submit reports to the County regarding the cause, response, and corrective action taken. § 5.5.
- Replace wear and tear items as necessary. § 5.11.
- Prepare and maintain a maintenance log for all maintenance and repairs. § 5.12.
- Perform work in a manner consistent with the degree of care and skill ordinarily exercised by reputable firms performing the same or similar work in the industry acting under similar circumstances and conditions. § 5.19.
- Promptly replace all Parts which may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for any reason whatsoever. § 6.1.
- Give immediate verbal and written notice of any Service Failure or any material damage to the Facilities, which included the Transformer. §7.1.
- Defend, indemnify and save harmless the County, its officers, agents, and employees from and against all liability, damages, costs or expenses, causes of actions, suits, judgments, losses, and claims of every name not described, including attorneys' fees and disbursements, brought against the County which may arise, be sustained, or occasioned directly or indirectly by any person, firm or corporation arising out of or resulting from the performance of the services by the Contractor, its employees, agents or subcontractors, the provision of any products by the Contractor, its employees, agents or subcontractors, arising from any act, omission or negligence of the Contractor, its employees, agents or subcontractors, or arising from any breach or default by the Contractor, its employees, agents or subcontractors under the Agreement. Nothing herein is intended to relieve the County from its own negligence or misfeasance or to assume any such liability for the County by the Contractor. Standard Clauses for County Contracts § 3.

Summary of Events

Siemens was the Performance Solutions Provider for the original development of the Iola Cogeneration Project in 2003, and was subsequently the exclusive operator of the generators, boilers, and related equipment to provide electricity, heat, domestic hot water, and steam to two critical County facilities: Monroe Community Hospital, located at 435 East Henrietta Road, Rochester, New York ("MCH"), and the Monroe County Department of Human Services and Department of Public Health, located at 111 Westfall Road, Rochester, New York 14620 ("111

Westfall," and, together with MCH, the "County Facilities"). MCH is a residential health care facility that provides long-term care for individuals with complex health conditions requiring higher levels of medical and nursing care. As indicated above, 111 Westfall is a multi-story office building that houses a number of vital County departments, including the Department of Human Services and the Department of Public Health. During the relevant period discussed below (i.e., March to August 2021), it was also a cold-storage location for the County's COVID-19 vaccinations.

Prior to 2021, Siemens operated and maintained three (3) generators that provided the primary source of electricity for MCH and 111 Westfall. Siemens also operated and maintained the Transformer, which served as a critical link between the electric grid and the County Facilities in the event the generators failed or could not produce sufficient electricity to meet the County's needs.

In 2020, the County determined that obtaining electricity from the grid was more economical than continuing the generation of electricity. The County notified Siemens on October 29, 2020 that it intended to renew the Operating Agreement for calendar year 2021 for the boilers, but that, pursuant to § 3.3 of the Operating Agreement, the County was electing to cease the operation of the generators at the end of the 2020 calendar year. At the County's insistence and as part of Siemens' vacation of the electric generation facilities under the Operating Agreement, Siemens sampled the Transformer oil on December 15, 2020 and discovered elevated gas levels. According to an email from you to Sean Murphy dated December 28, 2020, the last time Siemens had tested the Transformer oil was 2011, so it is not possible to determine how long gas levels had been elevated.

In early 2021, Siemens conducted additional testing to investigate the cause of the elevated gas levels, including a de-energized inspection by O'Connell Electric Company, Inc. ("O'Connell"). On March 11, 2021, O'Connell reported that they found evidence of arcing on the windings and that the Transformer "was not acceptable to put back into service due to imminent failure of internal components."

Without the Transformer, not only were the County Facilities unable to permanently move to the grid, but they were also cut off from accessing the grid in the event of an emergency. The County Facilities were solely dependent on the generators, which were experiencing degradation in performance up to and including June 2021, for the primary production of electricity, with smaller backup generators at MCH and 111 Westfall Road capable of providing short-term emergency power for life and safety devices at these facilities. In order to protect the residents at MCH, the cold-storage of the County's COVID-19 vaccinations, and ensure the continuance of County Department of Human Services and Public Health Department, the County rented three (3) large, portable diesel generators to serve as primary power until the new transformer could be delivered and installed. This was a decision to which Siemens contributed, as outlined in the weekly coordination calls chaired by Siemens.

In April 2021, the County issued purchase orders to Penn Power for the rental and maintenance of one (1) 1,000 kW portable generator for powering the chillers at MCH, and to

Milton Cat for the rental and maintenance of two (2) 2,000 kW portable generators to provide primary power to MCH and 111 Westfall Road. These units ran on a continuous basis (24 hours per day, 7 days per week) for several months during the period from which the generators became dysfunctional and the installation of the new 4000 KVA transformer. During this timeframe, Monroe County staff also had to continuously monitor the performance, fueling and maintenance of the portable generators to ensure reliable operation and supply of electricity to satisfy the critical needs of MCH and 111 Westfall Road.

The new transformer was delivered, installed, and tested on August 11, 2021, and the County Facilities were successfully connected to the grid the next day. Siemens and the County sent the Transformer to Sunbelt-Solomon Solution's ("Sunbelt Solomon") Kansas facility for an inspection.

Sunbelt-Solomon Solutions inspected the Transformer in September 2021 (at which representatives from Siemens and the County were present) and issued its inspection report on November 29, 2021 (the "Inspection Report"). In the Inspection Report, Sunbelt-Solomon found that "the cause for the arcing and faults was a result of an external event on the transformer. A HV induced surge on either the HV or LV winding would result in increased voltage across the tertiary winding. This would increase the voltage potential between the start and finish leads of the tertiary winding." The Inspection Report also noted that the center indicator was pushed up, which indicated the explosion relief had activated, and that the internal fault occurred sometime before Siemens sampled the Transformer oil in December 2020.

The County issued follow-up questions to Sunbelt-Solomon to determine if additional testing was necessary. In its response dated May 25, 2022, Sunbelt-Solomon stated that: (1) no additional tests would be able to better identify what the external event was or when it occurred; (2) an inspection of the Transformer should have included the position of the indicator pin; and (3) the damage to the Transformer was not a function of the original manufacturing process.

Analysis

As noted in my letter to Mr. Dillon dated May 18, 2021, preliminary inspections of the Transformer indicated that Siemens failed to perform any of their contractually-obligated services related to the Transformer prior to the County planning to cease operations of the generators. Indeed, if Siemens had performed its obligations under the Operating Agreement (and, we would note, under Siemens' prior contracts to operate and maintain the Facilities) and made the County aware of the Transformer's condition, the County would not have terminated services for the generators in 2020. Indeed, if the County was aware of the Transformer's condition, it would have replaced the Transformer while the three (3) generators were fully operational. This would have saved the County from having to rent and run the diesel generators, as well as: (1) permitted the County the opportunity to determine whether the Transformer could have been repaired, and/or (2) avoided the increased cost of purchasing a new transformer through an emergency purchase order.

Sunbelt-Solomon's inspection clearly demonstrated that Siemens acted in breach of the

Operating Agreement and was negligent in its operating and maintenance of the Transformer. Specifically:

- Siemens failed to operate the Transformer in a proper and workmanlike manner and in accordance with the practices, methods, and actions customarily engaged in or used by diligent and efficient operators of facilities of a nature similar to the Transformer. As noted in the enclosed Installation, Operation, and Maintenance manual for the Transformer (the "Manual"), Siemens should have "check[ed] all gauges and indicators regularly to ensure the transformer is operating properly within the limits of safe operations." Manual § 6.1. As observed by Sunbelt-Solomon, such inspection of the Transformer should have included the position of the indicator pin. Moreover, Siemens should have sampled and tested the liquid in the Transformer "at regular intervals, and the results recorded for future comparison." Manual § 6.3.1.8. This requirement is echoed in O'Connell's March 11, 2021 report: "Due to your critical dependence on the electrical distribution system, we recommend that similar maintenance and analysis [i.e., visual and mechanical inspection of all designated components in the electrical distribution system; compare nameplate capacity verses actual load conditions; provide recommendations for critical repairs; and test equipment] be performed on a regularly scheduled basis." Siemens' failure to inspect the Transformer at regular intervals throughout the term of the Operating Agreement, including but not limited to failing to sample the Transformer oil between 2011 and December 2020 and/or inspecting the Transformer to confirm that the center indicator had not tripped, was not in accordance with the practices, methods, and actions customarily engaged in or used by diligent and efficient operators of facilities of a nature similar to the Transformer. This failure was in breach of § 2.1 of the Operating Agreement.

- Siemens failed to operate, maintain, service, and repair the Transformer. In addition to Siemen's failure to inspect, Sunbelt-Solomon's inspection noted that "the collar on the indicating plunger was broken and would not allow the indicating plunger to be reset" and that "[t]he HV lead assemblies had extensive carbon contamination and several of the zip ties used to support and stand off the HV leads had broken….The zip ties appear to have become brittle which caused them to break." Although Sunbelt-Solomon acknowledges that the broken zip ties "did not result in any arcing or failure points on the HV leads," this nonetheless indicates at least three failures to operate, maintain, service, and repair the Transformer: (1) the failure to maintain, service, and repair the broken collar; (2) the failure to support and stand off the HV lead with a more permanent and reliable repair than zip ties; and (3) to the extent the use of zip ties was even prudent to begin with, the failure to repair the broken zip ties. These failures were in breach of § 5.1 of the Operating Agreement.

- Siemens failed to keep the Facilities, which included the Transformer, in good and safe condition, repair, working order and condition, including ordinary wear and tear. As of at least December 2020, if not sooner, the Transformer was not in good and safe condition, repair, working order and condition, including ordinary wear and tear, and could not be used by the County. This failure was in breach of § 5.1 of the Operating Agreement.

- Siemens failed to promptly make all necessary repairs, rebuilds, overhauls, replacements and renewals to the Facilities, which included the Transformer, whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen. To the extent the damage to the Transformer from the internal arcing and fault could have been repaired, Siemens failed to do so. Siemens also failed to repair the collar on the indicating plunger and broken zip ties (or, alternatively, provide a more effective repair to support and stand off the HV leads). These failures were in breach of § 5.1 of the Operating Agreement.

- Siemens failed to maintain the Facilities, which included the Transformer, in working order. As of at least December 2020, if not sooner, the Transformer was not in working order and could not be used by the County. This failure was in breach of § 5.1 of the Operating Agreement.

- Siemens failed to protect the Facilities, which included the Transformer, against deterioration, including ordinary wear and tear. As demonstrated by the broken collar on the indicating plunger and zip ties, Siemens failed to protect the Transformer against deterioration. This failure was in breach of § 5.1 of the Operating Agreement.

- Siemens failed to cause the Facilities, which included the Transformer, to continue to have the capacity and functional ability to perform, on a continuing basis, in normal commercial operation, at design capacity, the functions for which it was specifically designed. As of at least December 2020, if not sooner, the Transformer did not have the capacity and functional ability to perform, on a continuing basis, in normal commercial operation, at design capacity, the functions for which it was specifically designed. This failure was in breach of § 5.1 of the Operating Agreement.

- To the extent the Transformer was still covered by a warranty, Siemens failed to comply with standards and periodic maintenance inspections as shall be required to enforce warranty and similar claims against contractors for the Facilities, which included the Transformer, and any standards imposed by any insurance policies in effect at any time. This failure was in breach of § 5.1 of the Operating Agreement.

- Siemens failed to provide all necessary labor, materials, and equipment for the proper operation and maintenance of the Facilities, which included the Transformer. Siemens both failed to inspect the Transformer as well as failed to repair broken and/or deteriorated portions of the Transformer. This failure was in breach of § 5.1 of the Operating Agreement.

- Siemens failed to investigate and submit reports to the County regarding the cause, response, and corrective action taken when the Transformer failed. It was not until December 2020, when Siemens was winding up its operations, that Siemens investigated the failure. This failure was in breach of § 5.5 of the Operating Agreement.

- Siemens failed to replace wear and tear items as necessary, such as the collar on the indicating plunger and the zip ties (or, alternatively, provide a more effective repair to

support and stand off the HV leads). This failure was in breach of § 5.11 of the Operating Agreement.

- Siemens failed to prepare and maintain a maintenance log for all maintenance and repairs. The only documentation Siemens provided regarding maintenance and repair of the Transformer were the oil sampling report from 2011 and a report from 2017 when there were two failed attempts to test the oil. This failure was in breach of § 5.12 of the Operating Agreement.

- Siemens failed to perform work in a manner consistent with the degree of care and skill ordinarily exercised by reputable firms performing the same or similar work in the industry acting under similar circumstances and conditions. This failure was in breach of § 5.19 of the Operating Agreement.

- Siemens failed to promptly replace all Parts which may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for any reason whatsoever, including but not limited to the collar on the indicating plunger. This failure was in breach of § 6.1 of the Operating Agreement.

- Siemens failed to give immediate verbal and written notice of any Service Failure or any material damage to the Facilities, which included the Transformer. Siemens did not give any notice to the County that the Transformer was damaged and could not be placed into service. This failure was in breach of § 7.1 of the Operating Agreement.

The County sustained the following damages, costs, expenses, and losses arising out of and resulting from Siemens' performance of the services, act, omission, negligence, and above-listed breaches under the Operating Agreement:

IOLA XFMR REPLACEMENT
SUMMARY OF COSTS

Description	Cost	Vendor	Purchase Order	Method
New 4000 kVa Transformer	$89,775.00	Kaman	PO #7600006431	SQ D Blanket
Installation of Transformer	$40,036.69	Schuler-Haas	PO #7400004258	BP #0608-21
Generators @ Iola	$370,112.00	Milton Cat	PO #7400004108	Lease
Generators @ MCH (Chiller)	$216,719.00	Penn Power	PO #7400003681	Lease
Electrical Wiring of Generators	$9,022.10	Schuler-Haas	PO #7600007105	BP #0608-21
Record drawings for Forensics	$2,500.00	Niagara XFMR	PO #7400004712	Sole Source
Closure of B-11 for Wiring	$343.59	Emer Enclosure	PO #7500012389	Quote
Iola Permitting	$3,198.18	Day Engineering	PO #7300000583	Environ TSA
Generators @ Iola	$7,292.30	Milton Cat	PO #7400004078	Lease
PPE; Locks	$71.92	Grainger	PO #7500011408	Quote
Iola Permitting	$2,424.28	Day Engineering	PO #7300000526	Environ TSA
Generators @ Iola	$1,200.00	Milton Cat	PO #7400003989	Lease
Fuel	$476,234.34	NOCO	PO #7600007057; 7600007188; 7600005464	
County Labor & Supplies	$21,663.72	DES Electrical	Pure Waters work order #4065331 for Iola	
Σ =	$1,240,593.12			

If Siemens does not comply with this demand and remit $1,240,593.12 to the County **on or before March 2, 2023**, the County shall commence a lawsuit to recover the amount set forth above, together with attorneys' fees, disbursements, and any other costs or expenses we incur. The County continues to reserve all rights and remedies it may have law or in equity.

Sincerely,

Laura Smith
Chief Deputy County Attorney

cc: Thomas Broderick, Siemens Industry, Inc. *(via email)*
Sean Murphy, Monroe County DES *(via email)*
Preston Zarlock, Phillips Lytle LLP *(via email)*
Erin Connare, Phillips Lytle LLP *(via email)*