

**1400B CRIMINAL DAMAGE TO PROPERTY: ENERGY PROVIDER  
PROPERTY — § 943.01(2k)**

THE FOLLOWING INSTRUCTION SHOULD BE GIVEN IMMEDIATELY  
AFTER WIS JI-CRIMINAL 1400, CRIMINAL DAMAGE TO PROPERTY. <sup>1</sup>

**Determining Damage to Energy Provider Property**

If you find the defendant guilty, you must answer the following question:

“Did the defendant commit the crime of criminal damage to property under all of the following circumstances:

- 1) the property damaged was owned, leased, or operated by an energy provider;  
and,
- 2) the defendant intended to or did cause substantial interruption or impairment of any service or good provided by the energy provider.”

[A decommissioned nuclear power plant is an energy provider.]<sup>2</sup>

If you are satisfied beyond a reasonable doubt that the defendant committed the crime of criminal damage to property under all these circumstances, you should answer the question “yes.”

If you are not so satisfied, you must answer the question “no.”

**COMMENT**

Wis JI-Criminal 1400B was approved by the Committee in February 2019.

This instruction addresses subsection (2k) of § 943.01, created by 2015 Wisconsin Act 158. [Effective date: March 2, 2016]. Committing criminal damage to property under the circumstances specified in subsection (2k) increases the penalty to a Class H felony. As with similar provisions, the Committee recommends submitting this issue as a special question, to be considered by the jury if it reaches a guilty verdict on the criminal damage to property charge. The instruction assumes a case

involving conduct which falls into the special niche created by § 943.01(2k): damage to energy provider property. See note 1, below.

The following form is suggested for the guilty verdict:

We, the jury, find the defendant guilty of criminal damage to property, under Wis. Stat. § 943.01, at the time and place charged in the information.

If you find the defendant guilty, answer the following question “yes” or “no”:

“Did the defendant commit the crime of criminal damage to property under all of the following circumstances:

- 1) the property damaged was owned, leased, or operated by an energy provider; and,
- 2) the defendant intended to or did cause substantial interruption or impairment of any service or good provided by the energy provider.

1. This instruction should be given after the basic instruction on criminal damage to property, Wis JI-Criminal 1400, in place of the value question that is provided at the end of that instruction. This assumes that the case is charged as one falling into the special niche created by § 943.01(2k): damage to energy provider property. Damage to energy provider property that exceeded \$2,500 could, of course, be charged under the regular penalty provisions and would be a Class D felony. In that case, the value question at the end of Wis JI-Criminal 1400 should be used.

2. “Specify the applicable category of energy provider.” Section 943.143(1)(a) provides:

“Energy provider” means any of the following:

1. A public utility under s. 196.01 (5) (a) that is engaged in any of the following: (a) The production, transmission, delivery, or furnishing of heat, power, light, or water. (b) The transmission or delivery of natural gas.
2. A transmission company under s. 196.485 (1) (ge).
3. A cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power or water for its members.
4. A wholesale merchant plant under s. 196.491 (1) (w), except that “wholesale merchant plant” includes an electric generating facility or an improvement to an electric generating facility that is subject to a leased generation contract, as defined in s.196.52 (9) (a) 3.
5. A decommissioned nuclear power plant.
6. A company that operates a gas, oil, petroleum, refined petroleum product, renewable fuel, water, or chemical generation, storage transportation, or delivery system that is not a service station, garage, or other place where gasoline or diesel fuel is sold at retail or offered for sale at retail.

The court should inquire whether the parties agree that the entity whose property is at issue is a qualified energy provider. If there is no agreement, the court should require that the state designate under which subsection they are proceeding.