

**1440 CRIMINAL TRESPASS TO AN ENERGY PROVIDER PROPERTY — § 943.143****Statutory Definition of the Crime**

Criminal trespass to an energy provider property, as defined in § 943.143 of the Criminal Code of Wisconsin, is committed by one who intentionally enters an energy provider property without the consent of the energy provider that owns, leases, or operates the property.<sup>1</sup>

**State's Burden of Proof**

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

**Elements of the Crime That the State Must Prove**

1. The defendant intentionally entered an energy provider property.

(“Energy provider property” means property that is part of an electric, natural gas, oil, petroleum, refined petroleum product, renewable fuel, water, or chemical generation, transmission, or distribution system and that is owned, leased, or operated by an energy provider.)<sup>2</sup>

(A decommissioned nuclear power plant is an energy provider.)<sup>3</sup>

“Intentionally” requires that the defendant had the purpose of entering an energy provider property.<sup>4</sup>

2. The defendant entered an energy provider property without the lawful authority and consent of the energy provider.

The phrase “without consent” means that there was no consent in fact.<sup>5</sup>

### **Deciding About Purpose and Knowledge**

You cannot look into a person’s mind to find purpose and knowledge. Purpose and knowledge must be found, if found at all, from the defendant’s acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon purpose and knowledge.

### **Jury’s Decision**

If you are satisfied beyond a reasonable doubt that all four elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

### **COMMENT**

Wis JI-Criminal 1440 was approved by the Committee in February 2020.

Section 943.143 was created by 2015 Wisconsin Act 158. The statute was modified by 2019 Wisconsin Act 33 to expand the scope of the enhanced penalty for intentionally causing damage and trespassing to include property owned, leased, or operated by public water utilities, cooperative associations producing or furnishing water, and companies that operate gas, oil, petroleum, refined petroleum product, renewable fuel, water, or chemical generation storage transportation or delivery system.

1. Section 943.143(3) does not apply to any of the following:
  - (a) Any person who is:
    1. Monitoring compliance with public or worker safety laws, wage and hour requirements, or other statutory requirements.
    2. Engaging in picketing occurring at the workplace that is otherwise lawful and arises out of a bona fide labor dispute including any controversy concerning any of the following:

wages or salaries; hours; working conditions; benefits, including welfare, sick leave, insurance, pension or retirement provisions; or the managing or maintenance of collective bargaining agreements and the terms to be included in those agreements.

3. Engaging in union organizing or recruitment activities that are otherwise lawful including attempting to reach workers verbally, in writing, and in the investigation of non-union working conditions.

(b) An exercise of a person's right of free speech or assembly that is otherwise lawful.

2. Select qualifying business activity.

3. "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 retailer 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.

4. Section 939.23(3).
5. Section 939.22(48). Also see Wis JI-Criminal 948.