

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN EDUCATIONAL RESEARCH
ASSOCIATION, INC., AMERICAN PSYCHOLOGICAL
ASSOCIATION, INC., and NATIONAL COUNCIL ON
MEASUREMENT IN EDUCATION, INC.,

Plaintiff-Counterdefendants,

v.

PUBLIC.RESOURCE.ORG., INC.,

Defendant-Counterclaimant.

C.A. No. 1:14-cv-00857-TSC

**DEFENDANT PUBLIC RESOURCE'S
REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO [134] PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF PUBLIC
RESOURCE'S SECOND MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Evidence 201(b) and the authorities cited below, Defendant-Counterclaimant Public.Resource.Org respectfully requests that the Court take judicial notice of several matters in connection with its Memorandum of Law In Opposition to [134] Plaintiffs' Motion for Summary Judgment and In Support of Defendant's Cross Motion for Summary Judgment. In particular, Public Resource requests that the Court take judicial notice of certain aspects of the version of the 2002 National Electrical Safety Code (NESC) that the Indiana Supreme Court cited in *Bellwether Properties, LLC v. Duke Energy Indiana, Inc.*, 87 N.E.3d 462, 469 (Ind. 2017).

Public Resource respectfully asks this Court to take judicial notice of the fact (1) that the version of the NESC that Indiana Supreme Court cited is a resource on the Internet Archive website, archive.org, which is evident from examining the URL cited by the *Bellwether* court: <https://ia600704.us.archive.org/16/items/gov.law.ieee.c2.2002/ieee.c2.2002.pdf>; and (2) that the metadata page for this document indicates that it was "Uploaded by Public.Resource.Org."¹

In addition, Public Resource requests that the Court take judicial notice that the Institute of Electrical and Electronics Engineer (IEEE), which published the 2002 edition of the NESC, describes this version as "[s]uperseded," even though it is still Indiana law.²

A district court may take judicial notice of facts that are "not subject to reasonable dispute in that [they are] either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

¹ See <https://archive.org/details/gov.law.ieee.c2.2002> and https://ia600704.us.archive.org/16/items/gov.law.ieee.c2.2002/ieee.c2.2002.pdf_meta.txt

² See <http://ieeexplore.ieee.org/document/6516109/>

Specifically, a court may take judicial notice of matters of public record. *See Bebhick v. Washington Metro. Area Transit Comm'n*, 485 F.2d 858, 880 (D.C. Cir. 1973) (“[M]atters of public record . . . [are] well within the range of judicial notice.”). This Court has “frequently taken judicial notice of information posted on official public websites of government agencies.” *Pharm. Research & Manufacturers of Am. v. United States Dep't of Health & Human Servs.*, 43 F. Supp. 3d 28, 33 (D.D.C. 2014) (citing *Cannon v. District of Columbia*, 717 F.3d 200, 205 n. 2 (D.C. Cir. 2013)).

For these reasons, Public Resource respectfully requests that the Court take judicial notice of the matters listed above.

Dated: November 8, 2019

Respectfully submitted,

/s/ Andrew P. Bridges

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