

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

AMERICAN SOCIETY FOR TESTING AND
MATERIALS d/b/a ASTM INTERNATIONAL;

NATIONAL FIRE PROTECTION
ASSOCIATION, INC.; and

AMERICAN SOCIETY OF HEATING,
REFRIGERATING, AND AIR CONDITIONING
ENGINEERS,

Plaintiffs/Counter-defendants,

v.

PUBLIC.RESOURCE.ORG, INC.,

Defendant/Counterclaimant.

Case No. 1:13-cv-01215-TSC

**PUBLIC RESOURCE'S REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO
[198] 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 [198] Plaintiffs' Second Motion for Summary Judgment and for a Permanent Injunction and In Support of Defendant's Second 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 n. 176 (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 12, 2019

Respectfully submitted,

/s/ Andrew P. Bridges

Andrew P. Bridges (USDC-DC AR0002)
abridges@fenwick.com
Matthew B. Becker (admitted *pro hac vice*)
mbecker@fenwick.com
Armen N. Nercessian (pending *pro hac vice*)
anercessian@fenwick.com
Shannon E. Turner (pending *pro hac vice*)
sturner@fenwick.com
FENWICK & WEST LLP
801 California Street
Mountain View, CA 94041
Telephone: (650) 988-8500
Facsimile: (650) 938-5200

Corynne McSherry (admitted *pro hac vice*)
corynne@eff.org
Mitchell L. Stoltz (D.C. Bar No. 978149)
mitch@eff.org
ELECTRONIC FRONTIER FOUNDATION
815 Eddy Street
San Francisco, CA 94109
Telephone: (415) 436-9333
Facsimile: (415) 436-9993

David Halperin (D.C. Bar No. 426078)
davidhalperindc@gmail.com
1530 P Street NW
CSRL 2nd Floor
Washington, DC 20005
Telephone: (202) 905-3434

Attorneys for Defendant-Counterclaimant
Public.Resource.Org, Inc.