

**UNITED STATES COURT OF APPEALS
For the First Circuit**

No. 05-1572

EARLE H. SMITH, ET AL.,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent.

Before

Boudin, Chief Judge,
Torruella and Howard, Circuit Judges

JUDGMENT

Entered: July 7, 2005

Petitioners Earle H. Smith and Julie A. Smith have filed a petition for review of a Federal Energy Regulatory Commission (FERC) order, issued in 2005, which dismissed their complaint on the ground that the matters raised in the complaint had been considered by FERC in prior proceedings. These earlier proceedings concerned injuries to petitioners' property allegedly resulting from the construction of a natural gas pipeline that ran underneath the property. After FERC issued its earlier order, in 2000, rejecting petitioners' claims, we denied petitioners' petition for review. Smith v. FERC, No. 00-1785, slip op. (1st Cir. April 4, 2001). Pending before this court is FERC's motion requesting summary disposition of the current petition for review. We agree with FERC that the current petition is barred by this court's prior judgment.

Under the claim preclusion branch of res judicata, “a final judgment on the merits of an action precludes the parties or their privies from relitigating claims that were raised or could have been raised in that action.” Gonzalez-Pina v. Rodriguez, 407 F.3d 425, 429 (1st Cir. 2005) (internal quotation marks and citation omitted). The requirements for the application of claim preclusion exist here: “(1) a final judgment on the merits in [THE] earlier proceeding, (2) sufficient identity between the causes of action asserted in the earlier and [present] suits, and (3) sufficient identity between the parties in the two actions.”Id. As a result, the claims in the instant petition for review – which mirror the claims petitioners raised in their prior petition – are barred.

Petitioners appear to argue that they should be excused from the operation of res judicata on the ground that Portland Natural Gas Transmission System (PNGTS), which constructed the pipeline, admitted to having acted fraudulently in the prior proceedings by withholding evidence from FERC. See Restatement (Second) of Judgments 70(1) (b) (1982) (“a judgment in a contested action may be avoided if the judgment . . . [w]as based on a claim that the party obtaining the judgment knew to be fraudulent”). However, petitioners’ contentions regarding the alleged fraud are completely conclusory. They provide absolutely no details regarding (1) when and where PNGTS made the alleged admission, (2) the contents of this admission, (3) the nature of the evidence withheld from FERC, and (4) how petitioners came to know of this admission. This is insufficient to prevent the application of res judicata. See Lundborg v. Phoenix Leasing, Inc., 91 F.3d 265, 271 (1st Cir. 1996) (explaining that the litigation fraud exception to the bar of res judicata “insist[s] on severe conditions to the assertion of such a claim, due diligence in the discovery of the fraud in the original action and clear and convincing evidence of fraud in the collateral one”).

The petition for review is summarily denied. See Local Rule 27(c). The motion of PNGTS to intervene is denied as moot.

By the Court:

Richard Cushing Donovan, Clerk