



US court allows discovery in Brazilian energy dispute

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A US court has allowed a Brazilian energy trading company to obtain documents from the ultimate beneficial owners of the respondent company in an ongoing arbitration over the alleged breach of supply agreements.

In an [order](#) issued on 31 October, **Judge Beth Bloom** of the US District Court for the Southern District of Florida authorised Bio Energias to serve subpoenas on Amadeu Barbosa Filho and Romeu Pradines Jr – the executives of Vega, another Brazilian energy trader.

Bloom did not provide reasons for her decision to grant the requests, which were made under section 1782 of the United States Code.

Bio Energias filed its application in support of an arbitration it filed against Vega before the FGV Mediation and Arbitration Center in São Paulo (Câmara FGV de Mediação e Arbitragem), where it alleges that Vega is liable for its failure to comply with its obligation to sell energy pursuant to 21 power purchase agreements (PPAs).

The PPAs, concluded between October 2018 and January 2019, required Vega to provide around 300,000 megawatts per hour of energy to Bio Energias throughout 2019. Bio Energias says that it then entered into a number of contracts to trade the energy that Vega was contractually obligated to supply.

In January 2019, Pradines and Barbosa confirmed rumours that Vega was not capable of complying with its contractual obligations. They also publicly identified Bio Energias as one of Vega's largest creditors and said it would not receive the contractually stipulated supply of energy.

Bio Energias says that these disclosures caused “significant damages” and “undermined its credibility” in the energy market. It filed the São Paulo-seated arbitration in May, seeking damages for breach of contract and confidentiality covenants in the PPAs.

In its *ex parte* application to the US court, Bio Energias sought leave to serve subpoenas on the two executives and depose them on account of their participation in the negotiations leading up to the PPAs. Pradines is the legal representative of Interlagos Holding – the company that controls Vega, while Barbosa owns Sebring Capital – the company that in turn owns Interlagos Holding.

The Brazilian company has also obtained injunctive relief from a São Paulo state court to freeze Vega's bank accounts, over allegations that its officers were "fraudulently transferring" its assets to frustrate and circumvent the arbitration. However, Bio Energias says the injunction was only issued after those bank accounts were already "depleted".

The latest ruling comes a month after the US Court of Appeals for the Eleventh Circuit, to which the state of Florida is subject, [affirmed](#) that section 1782 allows for the disclosure of documents located outside the US.

In September, the US appeals court for the Sixth Circuit [permitted](#) discovery for use in a private commercial arbitration in a foreign country.

In re Bio Energias Comercializadora de Energia

In the United States District Court for the Southern District of Florida

Judicial bench

- Judge **Beth Bloom**

Counsel to Bio Energias

- Akerman LLP

Partners **Francisco Rodriguez**, **Felipe Berer*** and associate **Rebeca Mosquera*** in Florida

**pending filing of pro hac vice application, as the counsel are not admitted to the practice of law in Florida*