SB99 Pre-rulemaking - Aesthetics Criteria Working Group

Comments to Draft Siting Criteria for Aesthetics
April 30, 2014

General Comments

Any effort to draft a set of recommendations for aesthetic criteria has to start with a few key concepts in mind:

The criteria must not exceed the authority granted by the statute. The focus here, as defined by the statute, is for the SEC to make determinations about unreasonable adverse effects on aesthetics. That is the threshold and key question. Going beyond that is not necessary or consistent with statutory authority.

The SEC already has experience making these determinations. While most participants agree this aspect of the process can be improved, a lot about it has already worked well in practice. New criteria should target the specific areas that need improvement.

Criteria should not compel specific outcomes. The point of this exercise has got to be better defining the Visual Impact Assessment (VIA) process in order to ultimately allow the SEC to make determinations about unreasonable adverse impacts based on specific facts, the criteria and prior precedent.

There are good examples from other jurisdictions of how to undertake a VIA. Those should be drawn upon as appropriate so this rulemaking process does not have to re-invent the wheel.

With respect to many types of projects, such as gas pipelines, electric transmission lines, a biomass plant, etc, many aspects of the current proposal really don't fit and that will need to be accounted for.

Finally, my comments here are very preliminary. I tried to keep them very high level recognizing that this proposal is only a first iteration and does not yet reflect input from a broad group of constituencies.

Specific Comments

Definitions

1. As proposed, the definitions are too narrow. Any list of definitions will likely have to be more broad so it can better assist in the preparation of an objective VIA. However, that process should come later after the required elements of a VIA are better fleshed out.

2. Some definitions don't really work as proposed. For example, cumulative impacts should not be an element of a VIA. That is beyond the authority granted in the statute. The proposed definition of scenic viewpoint is too broad and will need work.

3. "Significant visual impact" as a defined term will create significant confusion and is likely unnecessary. As noted, the focus here is on "unreasonable adverse effect" on aesthetics and the process for helping the SEC to make that determination.

Application Requirements

1. This section really does not need much detail. In fact, it could stop after the first bullet and just let the experts do their job. If the VIA is lacking in any way the SEC deems significant, it can ask for more analysis or ultimately deny the application. The issue to date has not centered on the adequacy of VIAs – it has centered on determining what constitutes an unreasonable adverse impact on aesthetics. Notwithstanding that point, I offer a few other selected comments below.

2. Concepts associated with the "visual analysis zone" will need refinement. The SEC has already been using 10 miles for wind projects. That generally makes sense. Going to 15 miles has never been necessary. In addition, more thought needs to be given to this issue on the basis of the specific type of project. While 10 miles may make sense for wind, it is not necessary for other types of projects – biomass and gas plants, transmission lines, gas pipelines, etc.

3. The initial draft does not require that the applicant explain how the project was developed; how the applicant dealt with visual issues; what alternatives were considered; etc. There is no mention of mitigation measures that can be used to offset visual impacts.

4. Requiring GIS analysis may be overkill; the professional preparing the VIA should be able to use the most appropriate tools to provide the viewshed analysis. Tree heights of 40' are typically used; however, provisions will be needed to allow the VIA to determine actual tree heights and use that number in the assessment.

5. Number 8 is too broad. The viewshed mapping will provide this data. Moreover, the inclusion of 'individual residences' is not appropriate; standard practice is to limit analysis to public viewpoints or lands to which the public has access.

6. Number 9 also is too broad as currently proposed.

a. The concepts of 'characteristic landscape' and "Key Observation Points (KOPs) need to be brought into the discussion so the VIA process itself does not become unwieldy or unreasonable.
b. There is no way under this methodology to determine what is considered 'minimal', 'moderate', or 'significant'. Thresholds or some other way of evaluating the impact are necessary.

7. Item 10 is also too broad and contains requirements that are unnecessary or are not typically required in a VIA (g, for example) Page: 3

a. For (a), again, the concept of characteristic views should be discussed: i.e., using typical views or KOP's to represent a common class or type of view.
b. Under (c), the VIA should include a narrative and photo simulations to illustrate mitigation measures that have been considered and/or will be incorporated into the project to offset significant visual impacts.
c. There must be a reasonable limit on the number of photo simulations required. Certainly not from every viewpoint identified.

Siting Criteria

1. 1(a) is not workable and contrary to the siting statute. Likewise, 1(b) and (c) are too broad. The issue under the statute is unreasonable adverse effect on aesthetics. Any criteria that may be employed need to stick to the statutory standard and not impermissibly expand it.

2. Concepts like painting, etc. relate to mitigation. They are a case-by-case issue best left to the evidence in each case and the SEC's judgment.