

Power Sector Regulator: Structure, Roles and Responsibilities and Start-up Strategy

by SD Khan

The changing structure of the power sector in many countries has pushed the need for an effective regulator to ensure transparency and fairness in pricing while enabling the utilities to be financially viable and also to improve the quality of service to the consumers.

POWER utilities in many countries of the world have undergone reforms in the recent past and some are in the process of reform. The general theme of the reform programme has mainly been separation of the vertically integrated system on functional basis to bring efficiency in the industry and market structure on commercial basis. In Bangladesh also power sector reform activities have been initiated with the introduction of competition in generation through floating of tenders for independent power projects. Creation of some private power generation companies such as Meghnath Power Company and other companies including barge mounted companies are the results of this competition which will be adding new generation capacity in the private sector. Changes are also occurring in other value chain: with the creation of Power Grid Company (PGCB) the transmission network is being functionally separated from PDB. A new distribution company by the name of Dhaka Electric Supply Company (DESCO) has been formed. In future a PDB generation company with each generator as a profit centre and few distribution companies will also be created. These are part of the reform programme of the government in the power sector. The reform programme is aimed to bring competition in all activities in the sector, ensure efficiency for customer service by empowering the customers with their rights and obligations and involve the stakeholders in the power sector planning and development.

The changing structure of the power sector in many countries has pushed the need for an effective regulator to ensure transparency and fairness in pricing while enabling the utilities to be financially viable and

also to improve the quality of service to the consumers. This is accomplished by the regulator by regulating three broad areas. These are economic regulation, technical regulation and customers service standards.

Type of Regulatory Agency: In the world scenario various kinds of regulatory agencies varying from industry specific to sector-specific or to multi-sectoral are in existence. For example, in UK the regulatory agencies are industry specific such as gas, electricity, water and telecommunication, whereas in the state level regulator in USA multi-sectoral agencies are in place. There are advantages and disadvantages in both these options. One major advantage of the multi-sectoral agency is the sharing of expertise and this is particularly important for countries where expertise is scarce. Broader responsibility of a multi-sectoral agency guards against the agency's capture by the regulated industry, and against political authority. It can also avoid economic distortion by taking consistent approach in investment across various sectors. Effect of regulatory rules on one industry to other industry can be avoided in a multi-industry agency. The major disadvantage could be to pool all kinds of experts for all industries to regulate. Another disadvantage is to put 'all eggs in one basket'—agencies' failure would have cost all industries. One important issue which a government should, therefore, decide at the outset is the breadth of the regulatory authority. In case of Bangladesh in the Energy policy it is stipulated that there should be one regulatory authority for Bangladesh for the gas and electricity sector.

Independence: In order for the regulator to perform its de-

defined task, ideally it should operate independently from political pressure or from pressure of the regulated industries, be it public or private. Basically it means that the a) regulator keeps an arm's length relationship with the regulated industries, consumers and other private interest, b) an arm's length relationship with the political authority and ensures organisational autonomy. One of the best way to keep this independence is to appoint the regulator purely on the basis of professional qualification and ability rather than on political criteria and such appointment should be well protected from arbitrary removal during their tenure. In many countries, to ensure check and balance, appointment of the regulator involves both the executive and the legislature.

Autonomy: For the regulator to be autonomous, it must have its own resources for funding. In many countries it is viewed that regulator's independence is subject to provision from the government which is controlled by the politicians. Cutting the budget provision would be one very easy way to reduce the effectiveness of the regulator. The most common method adopted therefore for funding is through levies on the regulated firms or the consumers of the regulated industries. This may be considered as a service fee to the regulator to protect the interest of both the industries and the consumers. The autonomy of the regulator must go beyond the funding provision. The authority of re-

ruitment of all staff under the regulator must be vested with the regulator so that he can recruit the staff with high level of expertise. Such autonomy would also require exemption of civil service salary and recruiting rules. To keep the absolute minimum, the regulator should also have the authority to recruit experts and consultants for specialised task.

Accountability: Transparency in the decision making process would largely determine the accountability of the regulator and to maintain such transparency there must be set rules of procedures. Some key items could be:

- rules for setting deadlines for decision making;
- rules for justifying non-political review of decision;
- procedure for parties concerned for expressing views in public hearing and appeal decisions;
- rules for removal of the regulator.

Accountability could be enhanced with the increase in the number of commission members. A commission with three or five members could be a better choice than a single member commission.

Selection of Regulators: Selection of regulators is key to success of a regulatory agency. For an independent regulator the goal should be to select regulators/commissioners with personal qualities who can give independent judgement and resist improper pressure or inducement. This is more so for a new agency to be established

and in a country where there is no precedence of establishment of such independent sector regulator. The position of a regulator in any country is very unique. Men of integrity and stature holds such positions. In many countries a status of a minister is given to a regulator for enabling him to work in comfort with the executive authority.

Stakeholders' Role: To ensure acceptance of the regulator's decision by the regulated industries as well as by the consumers to be fair and legitimate, it is necessary that the stakeholders have the opportunity to represent their views. There are generally two approaches for such representation. One is through a formal process of hearing which is followed in the USA. This is sometimes considered to be too legalistic and time consuming. The other option is informal process. In some countries consultative or advisory councils have been formed which advise the regulator. The advisory council is composed of representatives from user or consumer group, utility and industry experts.

Regulatory Process: To underpin the need for fairness and legitimacy of decision it is necessary that the focus should be on transparency. Regulatory process would generally involve three major steps. First, stakeholders with an interest in a decision must be able to present their views; second, publication of the decision with reasons for taking the decision and, third, the stakeholder's opportunity to appeal against the decision of the regulator. The appeal process is very important to keep the regulator within the domain

of its mandate and to be accountable.

Appellate body: Where a regulatory body is independent it is necessary that the appellate body is also independent. In many states in the US appeal is heard directly in a court, whereas in many other countries there is an intermediate step in which the appeal goes to an appellate body which has better technical expertise than the court and decision could be quick. The grounds of appeal are generally defined in the regulation and are usually limited to errors of fact or of laws including failure to follow the required process.

Role of the Minister: One of the most sensitive issues of a regulator is the relationship with the relevant minister. Generally the minister is responsible for policy issues and the regulator for regulation. It may be sometimes difficult to have a very clear cut demarcation, if the regulator has significant discretion authority. There are four major considerations to determine the allocation of responsibilities between the agency and the minister. First, whether the matter in question to be judged on a political or technical ground. Second, whether co-location of particular function could create significant conflict of interest. The responsibility of the regulator in promoting investment in the sector could conflict with the role of the regulator as an impartial arbiter of investor and consumer interest. Third, if the regulatory agency has expertise for a task it may be performed by the same body to yield any economies. This may justify giving the agency an advisory role of matters that are with the ministry. The fourth

issue is the degree of confidence the political authorities have with the agency. In general the minister should be responsible for the broad sector policy including public investment, sector restructuring, taxation, subsidies, intergovernmental relations and legislative framework. The agency may play the advisory role in these areas also. The agency should be responsible for price setting, investment approvals, licensing, consumer quality of service, technical standards, anti-competitive practice etc.

Role relative to other Regulators: The main focus of the regulator is on economic regulation. But utilities are also subject to regulation to meet other raft objectives such as safety, conservation of energy practices and environmental issues for which there are other existing departments or regulatory agencies. In a country where there are other existing regulatory bodies, the role of each should be well defined to avoid any duplication, jurisdictional uncertainty and turf disputes.

Start up Strategy: Ideally an independent regulator should be in place before sector reforms have started even if formal powers of the agency is not in place. This will allow the regulator to familiarise with the given responsibilities, establish its office and undertake any training. This will also give opportunity the potential investors in understanding the regulatory regime of the country. Besides developing and mastering complex technical issues, creating a congenial working relationship with the political authorities, regulated utilities, customers and various stakeholders could be very challenging in the infancy. In countries where privatisation remains politically contentious and if the first evidence of its effect is price increase allowed by the regulator then life of the regulator is not made easy.

To face the challenge the regulator must have adequate training, get technical support for first few months from expertise and if required from consultants. Having arrangement between new regulator and more experienced foreign regulator has been adopted by some countries as one way to get support and advice.

What is being done in Bangladesh: As per policy decision of GOB, the Power sector in Bangladesh is under the process of restructuring. The Power Cell under the Ministry of Energy and Mineral Resources has been created to translate the committed sector reform programme of the government. Some of the reform programme such as private power generation, separation of transmission system from generation, establishment of a viable distribution network have already been initiated. The National Energy Policy document states that a National Regulatory Authority be established for the Power and Gas Sector. Power Cell has undertaken, as one of its task, to establish this Regulatory Authority. The task includes presently to design a regulatory framework for the power sector to facilitate operation and interaction of various sector entities under the reformed industry and market structure, and to monitor their service obligations. The structure and function of the Regulatory will ensure that the sector entities are financially viable, promote competition, ensure safety and service obligation and protection of the rights of the consumers and third party.

A draft regulatory framework along with recommendation of a Regulatory structure, powers, independence, authority, operating mechanism along with a new Electricity Act to replace the 1910 Electricity Act will be made available to the government within March 1998.

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Democratic Pluralism in the Marketplace

by Fazlul Alam

PLURALISM in democracy is an 'event'. It is not an absolute requirement for democracy. For democracy is based on the consensus of the people, whether expressed through one party or several parties. Existence of political parties is definitely a pre-requisite, but their number is not important. This can be argued in a situation where one political party wins a landslide victory, gaining, say, a majority of eighty per cent or so. The rest of the seats, twenty per cent, will be occupied by other parties or independents and reserved seat candidates. In such a situation the majority party, dominating the government, will have a free play in formulating and implementing any political decisions or policies they desire. It would still be 'democracy'.

Frightening Picture of one Party Rules

A strong majority party rule may give rise to a fearful situation and lead to autocratic rule. What is the logic behind such a fear? The fear is based on an argument that this party can bring any reforms and pass any new acts without hindrance and thus misuse the power bestowed on it.

True though the logic is, it is based on a fallacy. The fallacy is that the party which has been elected by the consensus of the people will not be able to make any reforms or pass any acts which adversely affect the people, particularly their economic conditions.

Economic Relations and Democracy

A government based on the true consensus of the people is a representative's instrument machinery to run the country. This government is the 'State', and it must ensure smooth running of the country being the sole reason for their existence. By smooth running means all functional apparatus of the government and non-governmental sectors run according to policies determined by the 'the State', and supported by a legal framework. This legal framework is to be determined by an

independent legal sector judiciary.

One important purpose of the 'State', among others, is to enhance healthy and prosperous economic system which will benefit the country as a whole. This economic system in modern post-Soviet world order is free market based. Market is to determine what economic strategies are needed and how to translate such strategies into action. The government or the 'State' is subservient to the economic activities apart from ensuring that the independent free market works within prescribed legal framework and the policies agreed by the 'State' and the business world.

In short, democracy will ensure a strong market economy and assist the 'markets' in their functioning.

Market Excesses and the State

Not long ago, political economists feared that unless and until there are adequate laws and law enforcing apparatus where 'the State' allows market a free hand to function the market may become oppressive and ruthlessly exploit the people to make personal profit. The same school of thought also fears that because the market and the 'State' may be interlocked in familiar, social and other close relationships, the 'State' may become an instrument to serve the interest of the individuals in those relationships and may not control the excesses of the market.

The opposite school argues that such a situation cannot arise for many reasons. One major reason is that the 'State' is a structural organ whose functions are determined by constitutional and legal frameworks. Any involvement of individuals and nepotism of some of the individuals within the structural organ of the state can be restricted by structural preconditions determined by laws.

The first school of thought replies that in a 'weak' economy

(as in the Third World countries) such control is not foreseeable, because the 'political elite' are the same as the 'business elite'.

Opposition as a Check on the Excesses of the State

Democratic pluralism, then seems to be a necessity to ensure that the State's power remains under check. But such pluralism even if guaranteed by constitutional and legal frameworks, may exist in theory only. For the existence of multiple parties cannot guarantee as stated in the first part of this essay, their forceful representation in the 'State', though the possibility remains greater. How can this forceful representation be guaranteed? One way is to accept that the 'State' is not constituted of the majority party, but the 'State' should mean a combination of the majority party and opposition parties. Together they make the 'State'. In such a situation the members of the majority party do not have to support all the moves of their party; they can oppose and criticize their own party, cast their votes in any manner they see as just and thereby keep democracy alive.

Democracy is not about being elected only, but the process of democracy continues even after being elected. In a parliamentary pluralism, such democratic processes can continue endlessly. This has to be ensured by the Speaker of the Parliament in a democratic situation and he/she will decide which motion can be debated or not, debated, which bill should be read or not read and so on. In other words, the Speaker cannot be an appointee of the majority party; but an appointee of the legal system which remains outside the sphere of the 'State'.

More Powerful Check on the State

Surprisingly, greater and more powerful 'check' on the possible excesses of the State comes from the market itself. The control of this very market

is an important task of the 'State', but on the other hand, this market can also put a check on the 'State' excesses of policies which are damaging and detrimental to the market itself. The 'market' must remain a crucial parameter for measuring the performance of the 'State'. Whereas, the 'State' can impose performance target of the market, the market also can expect a satisfactory conduct which the State has to deliver.

Recipe for Disaster: A Strong Opposition

Strong opposition is not always necessarily a check on the 'State' excesses, but may be a recipe for disaster in some developing countries. In the name of the masses or the people a strong opposition can disrupt the functioning of the 'State' at any time. Sometimes for a just cause, but most of the time for their own party objectives, one of which is to draw attention to themselves and steal the limelight.

Is Pluralism an Absolute Necessity?

The viability of democratic pluralism in a developing country may not be a satisfactory solution on the ground that the State remains interlocked with debates and arguments indefinitely, and the government works either for the market or for the country as a whole can be delayed or postponed. On the other hand pluralism can ensure a balanced outcome in policies and practices. Whichever way we agree, one cannot deny the fact that once a government — any government of any party — is formed as the 'State', it must be allowed to act, supported or debated by all through normal democratic machinery (such as debates, votes etc.) with the sole objective of smooth working and controlling of the 'market'.

Short of that, pluralism or not, democracy is not viable in a market economy, and democracy will fail in the Market.

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ARCHITECTURAL EDUCATION

When Skills Outweigh Degrees

by Raziuddin Ahmad

To successfully and effectively practise one's profession, one needs to acquire up-to-date knowledge of artistic, scientific and technological advancements of the relevant subjects of one's professional field, and there is no alternative to it.

EDUCATION system, its curricula, method of teaching, education and qualifications of teachers, books and other materials followed etc., is nothing inflexible. It changes with the development of the faculties of humanity, science and technology and philosophical doctrine. Of all the factors in the system, some last longer than the others but none is permanent. It is a never-ending experiment that changes with the change of human outlook and values, scientific and technological development, and philosophical and psychological requirements.

In technical universities students need to complete a minimum of four-year course for a bachelor's degree only (some need more — five to six years of study) and they do not have a pre-determined honour's course — they need to achieve it as a class by their performance. To be an honour's graduate in these courses, one needs to secure at least seven-five per cent marks or get a first or second class, there is no provision of third class.

So, there is no logic to weigh all these degrees by the same scale; and, therefore, illogical to fix up criterion for selection of teachers in the same manner in all the universities.

In a general university one has to have a master's degree to become a teacher of the lowest level i.e. a lecturer. This does not necessarily mean that in a technical university this rule must also be followed. Now, what these degrees indicate? Is it obligatory to maintain a uniform rule all over? I am sure the answer is, 'No'.

From our earlier discussions we learned that, the more one goes for a higher study more one narrows down one's field and concentrates in a minute detail of a subject. So, one can be a better research guide in one's specialised field but not necessarily a better teacher for general students. (Does this, in any way, have any implication other than in research works?). In fact, for an undergraduate course, one does not need a teacher with a very high educational degree unless it is possible to provide experts on every detail (chapter) of a subject that, practically, is not possible, particularly in our country. Unfortunately, we do not bother about these facts and only superficially try to see if one possesses a master's or a doctor's degree. This sort of judgement is erroneous with no help for the general purpose of selecting a teacher for the welfare of the students. Mostly this is just ornamentation.

Under the circumstances, the education and qualifications of a teacher must be different for different purposes, and it is so to some extent, still it seems to be unbalanced in many cases. Our policy makers seem to be indifferent in this respect particularly in formulation of the selection criteria for the university teachers. In (government) colleges, teachers are promoted to higher positions. Most of the professors are with no doctorate degrees but in a university, each post is filled

through fresh recruitment, and they need to fulfill the requisite qualifications including their educational degrees. Well, there is no harm in it, but the criteria for selecting a teacher must be revised particularly for the architectural education.

The same practice is observed in the selection and recruitment of teachers for architectural education. Architecture is a functional art of building and has little relation with higher educational degrees. This is comparatively a new field of education in our country, so, let us review its history in brief.

The first school of architecture in this region was established in 1962 as a Department of the Faculty of Architecture and Planning under the newly-set East Pakistan University of Engineering and Technology (EPUET), which, after the independence of Bangladesh named, Bangladesh University of Engineering and Technology (BUET), Dhaka. Under an arrangement Texas A&M University of USA instituted this department and the same university helped to begin its programmes with a team of its teachers headed by Professor Richard E. Vrooman, an award-winning professor of his country. None of the teachers who came and constituted the newly formed school in EPUET possessed a doctor's degree although most of them were professors of a US university.

After twenty years of the foundation of the above school one more school of architecture was opened under a newly established university in Khulna in 1982 and was named Architecture Discipline. This school started operating with Ar Bijon Behari Sarma as its Head. Ar Sarma received his degree of Bachelor of Architecture of BUET, Dhaka in 1977 and was in the profession for about fifteen years before he engaged himself in teaching. Now he has completed about six years as a university teacher besides his practical experience as a professional architect and still is not qualified to be an associate professor, not to speak of a professor, under the present rules of the university.

I do not know if Ar Sarma is otherwise disqualified to make himself a professor. However, in my opinion a professional who has practised his profession for five years or so, he acquires knowledge equal to or more than a master's degree holder and one having ten years' or more professional experience is, undoubtedly, more knowledgeable than a person with doctor's degree. Of course, transfer of knowledge i.e. teaching and being knowledgeable are two different things. Therefore, it is not necessarily that a highly knowledgeable person would make a good teacher — no matter how he has acquired the knowledge.

In post-graduate study, one goes through a definite limited curricula designed for the course covering some theories and some sessions (for architecture, design, etc.) activities. The programme ends up with the submission of a thesis and appearance in a set of formal

examinations that do not necessarily cover all that were there in the curricula. All these activities are but a tiny fraction of what one does in practice. In practice it is obligatory for one to go through all these theories in greater details for the sake of the projects one is commissioned for without any choice since practical projects leave no scope for choice, and does lot of projects with the limitations of space, budget etc., that are absent in a class project.

Class projects are also limited in number. To successfully and effectively practise one's profession, one needs to acquire up-to-date knowledge of artistic, scientific and technological advancements of the relevant subjects of one's professional field, and there is no alternative to it. Unfortunately, we generally find that the academics, particularly in our country, lack in keeping themselves up-to-date. How could it be possible then that they would learn better than a practising professional — it is simply ridiculous to expect.

Therefore, a practising architect, who has spent around five years in the profession, is more equipped with knowledge in all relevant fields than an architect with a master's degree with no practical experience. A practising professional grows discretion, and it is popularly said that 'an ounce of discretion is worth a pound of learning'. This is the reason an educator is allowed to practise his profession in the developed countries, and not because they do not have sufficient professionals for works they have. On the other hand, we have bars and restrictions for the teachers to practise their professions making them crippled. Our funny rules indicate that nothing can replace a formal degree conferred by a university after completion of a routine educational exercise.

I will now name a few professionals who had poor educational background with high achievements.

Frank Lloyd Wright (1869-1959), one of the master architects, known as the father of modern architecture and the creator of organic architecture, had not even done undergraduate course in architecture. His style and philosophy of his architecture are studied in all levels of architectural education. Many received their doctorates doing research on his works.

Ernst Neufert with not much of formal education became professor of architecture at various universities and colleges and author of many books and articles. One of his books titled *Architect's Data* is followed by architects, engineers, builders, students and many others throughout the world. He is now, an honorary member of the Real Academia de Ciencias y Artes Barcelona and of the Royal Institute of British Architects, honorary professor and doctor at the University of Lima, Peru. He has been awarded the German Merit Cross with star, as well as various other German and foreign honours.

Balkrishna Doshi, one of the leading practising architects in

India, a professor of architecture in the School of Architecture at Ahmedabad University, and one of the 100 contemporary architects of the world, does not have even a bachelor's degree in architecture. Many publications are there on him that are read and followed in architectural schools at different levels.

Miles Danby, a member of the Royal Institute of British Architects, without a bachelor's degree became a professor of architecture at the University of New Castle upon Tyne, UK. He received the honour of Professor Emeritus. Now he is practising architecture as an expert on institutional buildings, and design of universities and other institutional buildings in Africa and in some European countries.

Tadao Ando, a self-educated architect, possibly the most giant in Japan, and one of the top 100 of the contemporary architects of the world. He received the Annual Prize of Architectural Institute of Japan; the Japanese Cultural Design Prize (first time given for housing); the Gold Medal of the French Academy of Architecture; Arnold W. Brunner Memorial Prize, Japan; and the Honorary Fellowship of Columbia and Yale Universities. At present, he is a supervisor of Ando Tadao Architectural Studio; and could well be a professor of a university, should he wanted to be one.

Thousands such examples are possible to be cited.

The examples above clearly indicate that through practice one learns and matures oneself so much that only with a bachelor's degree or even without that one may be capable to guide a learner even for his post-graduate study leading to master's or doctor's degree. It is, therefore, illogical to impose bar on bachelor's degree holder to be a professor or to fix-up the requirements for being a professor that one must have a master's degree if not doctorate, particularly in architectural education. There is absolutely no reason to suppose that these degrees are essential to be a good teacher; and any good teacher with adequate experience deserves to be a professor. Possessing an MS, MPhil or a PhD cannot and must not be a criterion for making a professor.

One more point, I think, would not be irrelevant in this context. The universities are either an autonomous body or a private institution. Here, there is no provision of promotion from one position to the next higher position, at least for the teachers. I do not know why! In government institutions, from primary schools to the university colleges, promotion is the usual practice to fill-up the next higher position. In my opinion, this is logical because one is promoted not only in consideration of one's length of service but also considering one's capability and merit. Anyone teaching for a reasonable time is expected to acquire skill, becomes conversant and builds confidence. Why should one, then, not get promotion if one could achieve those?

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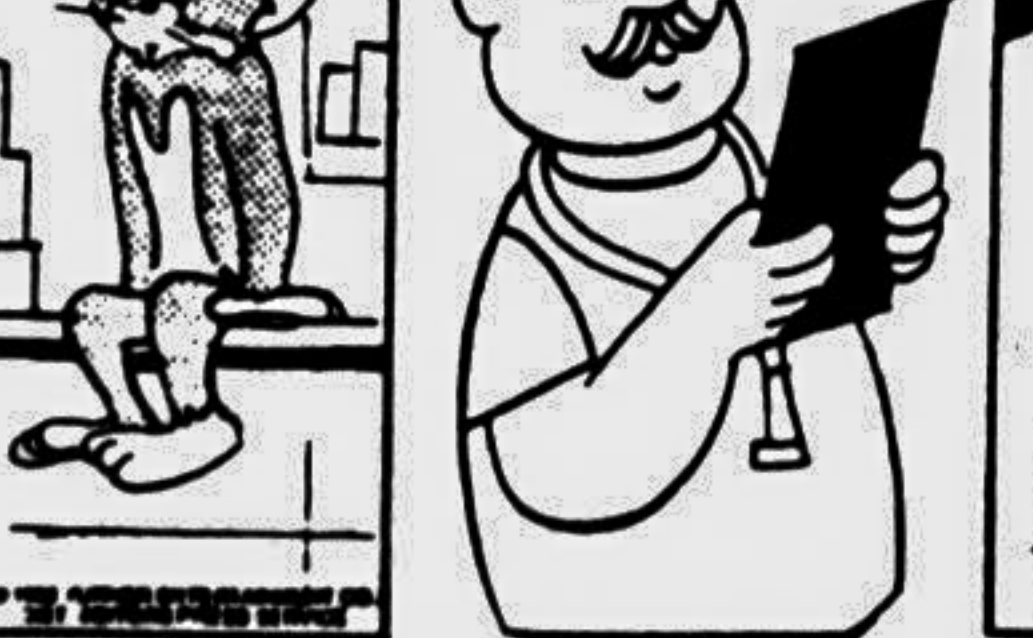
Tom and Jerry

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WHAT A RELIEF.

HOWEVER...



by Jim Davis



ONE OF YOUR FLEAS HAS A DISLOCATED HOPPER.

By Hanna-Barbera

